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Superior Court of California,
County of Tulare

05/12/2022

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

MATTHEW RAMIREZ, ADAM
VILLASENOR, LUIS FLORES, STEVEN
SAEVANG, and PEDRO GUTIERREZ,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

PREGIS INNOVATIVE PACKAGING LLC,
a Limited Liability Company; MANPOWER,
U.S. INC., a Corporation, and Does 1 through
50, Inclusive,

Defendants.

Case No. **VCU285886**

**CONSOLIDATED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiffs Matthew Ramirez, Adam Villasenor, Luis Flores, Steven Saevang, and Pedro
2 Gutierrez (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated
3 current and former employees, allege on information and belief, except for their own acts and
4 knowledge which are based on personal knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant Pregis Innovative Packaging LLC, a limited liability company and
8 Manpower, U.S., Inc., a corporation (collectively “DEFENDANTS”) at all relevant times
9 mentioned herein conducted and continue to conduct substantial and regular business
10 throughout California.

11 2. DEFENDANT Pregis Innovative Packaging produces protective packaging
12 products which include foam, inflatable, paper, and bubble packaging products for consumer
13 and industrial markets. DEFENDANT Manpower, U.S., Inc., is a nationwide corporation
14 providing innovative workplace solutions who provided staffing for Pregis Innovative
15 Packaging.

16 3. Plaintiff Ramirez was employed by DEFENDANTS in California from October
17 of 2014 to June of 2020 and was at all times classified by DEFENDANTS as a non-exempt
18 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
19 payment of minimum and overtime wages due for all time worked.

20 4. Plaintiff Villasenor was employed by DEFENDANTS in California from
21 November of 2005 to July of 2020 and was at all times classified by DEFENDANTS as a non-
22 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
23 periods and payment of minimum and overtime wages due for all time worked.

24 5. Plaintiff Flores was employed by DEFENDANTS in California from November
25 2016 through March 2021 and was at all times classified by DEFENDANTS as a non-exempt
26 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
27 payment of minimum and overtime wages due for all time worked.

1 6. Plaintiff Saeveng was employed by DEFENDANTS in California from September
2 of 2017 to May of 2021 and was at all times classified by DEFENDANTS as a non-exempt
3 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
4 payment of minimum and overtime wages due for all time worked.

5 7. Plaintiff Gutierrez was employed by DEFENDANTS in California from May of
6 2020 to June of 2021 and was at all times classified by DEFENDANTS as a non-exempt
7 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
8 payment of minimum and overtime wages due for all time worked.

9 PLAINTIFFS bring this Class Action on behalf of themselves and a California class, defined
10 as all individuals who are or previously were employed by DEFENDANTS in California and
11 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
12 period of May 8, 2018 through February 21, 2022 (the "CALIFORNIA CLASS PERIOD"). The
13 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
14 million dollars (\$5,000,000.00).

15 8. PLAINTIFFS bring this Class Action on behalf of themselves and a
16 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
17 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' policy and
18 practice which failed to lawfully compensate these employees for all their overtime worked.
19 DEFENDANTS' policy and practice alleged herein was an unlawful, unfair and deceptive
20 business practice whereby DEFENDANTS retained and continue to retain wages due
21 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
22 other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
23 DEFENDANTS in the future, relief for the named PLAINTIFFS and the other members of the
24 CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and
25 current unlawful conduct, and all other appropriate legal and equitable relief.

26 9. The true names and capacities, whether individual, corporate, subsidiary,
27 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are
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1 presently unknown to PLAINTIFFS who therefore sue these DEFENDANTS by such fictitious
2 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
3 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they
4 are ascertained. PLAINTIFFS are informed and believe, and based upon that information and
5 belief allege, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
6 inclusive, are responsible in some manner for one or more of the events and happenings that
7 proximately caused the injuries and damages hereinafter alleged.

8 10. The agents, servants and/or employees of the DEFENDANTS and each of them
9 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
10 authority as the agent, servant and/or employee of the DEFENDANTS, and personally
11 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the
12 conduct alleged herein. Consequently, the acts of each DEFENDANTS are legally attributable
13 to the other DEFENDANTS and all DEFENDANTS are jointly and severally liable to
14 PLAINTIFFS and the other members of the CALIFORNIA CLASS, for the loss sustained as
15 a proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

16 17 **THE CONDUCT**

18 11. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed to accurately
19 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
20 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
21 DEFENDANTS are required to pay PLAINTIFFS and other CALIFORNIA CLASS Members
22 for all time worked, meaning the time during which an employee was subject to the control of
23 an employer, including all the time the employee was permitted or suffered to permit this work.
24 DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS Members to work off the
25 clock without paying them for all the time they were under DEFENDANTS' control.

26 12. Specifically, during the CALIFORNIA CLASS PERIOD, DEFENDANTS
27 engaged in the practice of requiring PLAINTIFFS and CALIFORNIA CLASS Members to
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1 perform work off the clock during what should have been these employees' off-duty meal
2 periods. Additionally, DEFENDANTS engaged in the practice of requiring PLAINTIFFS and
3 CALIFORNIA CLASS Members to perform work off the clocking that DEFENDANTS, as a
4 condition of employment, required these employees to wait in line and submit to mandatory
5 temperature checks for COVID-19 screening prior to clocking into DEFENDANTS'
6 timekeeping system for the workday. As a result, PLAINTIFFS and other CALIFORNIA
7 CLASS Members forfeited minimum wage, overtime wage compensation, and off-duty meal
8 breaks by working without their time being correctly recorded and without compensation at the
9 applicable rates. Further, PLAINTIFFS and other members of the CALIFORNIA CLASS from
10 time to time were not paid wages for all time worked, including overtime wages, such that in
11 the aggregate employees were underpaid wages as a result of DEFENDANTS' pattern and
12 practice of unevenly rounding time worked by its employees. DEFENDANTS' policy and
13 practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time
14 worked, is evidenced by DEFENDANTS' business records.

15 13. In addition, State and federal law provides that employees must be paid overtime
16 at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA
17 CLASS Members are compensated at an hourly rate plus incentive pay that is tied to specific
18 elements of an employee's performance.

19 14. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
20 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
21 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
22 performance for DEFENDANTS. The non-discretionary incentive program provided all
23 employees paid on an hourly basis with incentive compensation when the employees met the
24 various performance goals set by DEFENDANTS. However, when calculating the regular rate
25 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,
26 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular
27 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
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1 the incentive program to potential and new employees as part of the compensation package. As
2 a matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA
3 CLASS Members must be included in the “regular rate of pay.” DEFENDANTS also underpaid
4 sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS Members by failing to pay
5 such wages at the regular rate of pay. Specifically, PLAINTIFFS and other non-exempt
6 employees regularly earn non-discretionary remuneration, including but not limited to,
7 incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of
8 pay, DEFENDANTS underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS
9 Members at their base rates of pay. The failure to do so has resulted in an underpayment of
10 overtime compensation to PLAINTIFFS and other CALIFORNIA CLASS Members by
11 DEFENDANTS.

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

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

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

26 18. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
27 Members as a business expense, were required by DEFENDANTS to use their own personal
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cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cellular phones to for work related issues. As a result, in the course of their employment with DEFENDANTS, PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

19. 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. From time to time, DEFENDANTS violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct gross and net wages earned. PLAINTIFFS and CALIFORNIA CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANTS provided to PLAINTIFFS and other CALIFORNIA CLASS Members failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period. When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

20. Specifically as to PLAINTIFFS, they were required to work off the clock during what should have been their off duty meal periods. Additionally, DEFENDANTS required PLAINTIFFS to wait in line and submit to mandatory temperature checks for COVID-19 screening prior to clocking into DEFENDANTS' timekeeping system for the workday. As a result, PLAINTIFFS forfeited minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. PLAINTIFFS were also from time to time unable to take off duty meal and rest breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFFS with a second off-duty meal period from time to time in which they were required by DEFENDANTS to work ten (10) hours of work. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' corporate policy and practice. The amount in controversy for PLAINTIFFS individually do not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

23. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") and Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANTS in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period of May 8, 2018 through February 21, 2022 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

26. DEFENDANTS, in violation of the applicable Labor Code, Industrial Welfare

1 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
2 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANTS
3 failed to correctly calculate and record minimum wage, and overtime compensation for all time
4 worked by PLAINTIFFS and the other members of the CALIFORNIA CLASS, even though
5 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and
6 permitted or suffered to permit this work.

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

17 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
18 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
19 employee for all overtime worked at the applicable rate, as required by California Labor Code
20 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
21 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
22 as to include all earnings in the overtime compensation calculation as required by California
23 Labor Code §§ 510, *et seq.* DEFENDANTS denied these CALIFORNIA CLASS Members
24 wages at the correct amount to which these employees are entitled in order to unfairly cheat the
25 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
26 CALIFORNIA CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should
27 be adjusted accordingly.

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

3 30. DEFENDANTS violated the rights of the CALIFORNIA CLASS under
4 California law by:

- 5 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
6 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
7 place company policies, practices and procedures that failed to pay all
8 wages due the CALIFORNIA CLASS for all overtime worked, and failed
9 to accurately record the applicable rates of all overtime worked by the
10 CALIFORNIA CLASS;
- 11 (b) Committing an act of unfair competition in violation of the California
12 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
13 unlawfully, unfairly, and/or deceptively having in place a company policy,
14 practice and procedure that failed to correctly calculate overtime
15 compensation due to PLAINTIFFS and the members of the
16 CALIFORNIA CLASS;
- 17 (c) Committing an act of unfair competition in violation of the California
18 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
19 failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and
20 the CALIFORNIA CLASS members;
- 21 (d) Committing an act of unfair competition in violation of the California
22 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
23 unlawfully, unfairly and deceptively having in place company policies,
24 practices and procedures that denied PLAINTIFFS and the members of
25 the CALIFORNIA CLASS the correct minimum wages and otherwise
26 violated applicable law;
- 27 (e) Committing an act of unfair competition in violation of the California
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Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;

(f) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA CLASS the correct overtime pay for which DEFENDANTS is liable pursuant to Cal. Lab. Code § 1194 & § 1198;

(g) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay the PLAINTIFFS and the members of the CALIFORNIA CLASS the correct minimum wage for which DEFENDANTS is liable pursuant to Cal. Lab. Code §§ 1194 and 1197, and 1197.1;

(h) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

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

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

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

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

27 32. Common questions of law and fact exist as to members of the CALIFORNIA
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1 CLASS, including, but not limited, to the following:

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

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

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

1 create the risk of:

- 2 1) Inconsistent or varying adjudications with respect to individual
3 members of the CALIFORNIA CLASS which would establish
4 incompatible standards of conduct for the parties opposing the
5 CALIFORNIA CLASS; and/or,
6 2) Adjudication with respect to individual members of the
7 CALIFORNIA CLASS which would as a practical matter be
8 dispositive of interests of the other members not party to the
9 adjudication or substantially impair or impede their ability to
10 protect their interests.

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

- 17 1) With respect to the First Cause of Action, the final relief on behalf
18 of the CALIFORNIA CLASS sought does not relate exclusively to
19 restitution because through this claim PLAINTIFFS seek
20 declaratory relief holding that the DEFENDANTS' policy and
21 practices constitute unfair competition, along with declaratory
22 relief, injunctive relief, and incidental equitable relief as may be
23 necessary to prevent and remedy the conduct declared to constitute
24 unfair competition;

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

4 1) The interests of the members of the CALIFORNIA CLASS in
5 individually controlling the prosecution or defense of separate
6 actions in that the substantial expense of individual actions will be
7 avoided to recover the relatively small amount of economic losses
8 sustained by the individual CALIFORNIA CLASS Members when
9 compared to the substantial expense and burden of individual
10 prosecution of this litigation;

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

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

17 B. Adjudications with respect to individual members of the
18 CALIFORNIA CLASS would as a practical matter be
19 dispositive of the interests of the other members not parties
20 to the adjudication or substantially impair or impede their
21 ability to protect their interests;

22 3) In the context of wage litigation because a substantial number of
23 individual CALIFORNIA CLASS Members will avoid asserting
24 their legal rights out of fear of retaliation by DEFENDANTS,
25 which may adversely affect an individual's job with
26 DEFENDANTS or with a subsequent employer, the Class Action
27 is the only means to assert their claims through a representative;
28

1 and,

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

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

- 9 (a) The questions of law and fact common to the CALIFORNIA CLASS
10 predominate over any question affecting only individual CALIFORNIA
11 CLASS Members because the DEFENDANTS' employment practices are
12 applied with respect to the CALIFORNIA CLASS;
- 13 (b) A Class Action is superior to any other available method for the fair and
14 efficient adjudication of the claims of the members of the CALIFORNIA
15 CLASS because in the context of employment litigation a substantial
16 number of individual CALIFORNIA CLASS Members will avoid
17 asserting their rights individually out of fear of retaliation or adverse
18 impact on their employment;
- 19 (c) The members of the CALIFORNIA CLASS are so numerous that it is
20 impractical to bring all members of the CALIFORNIA CLASS before the
21 Court;
- 22 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
23 able to obtain effective and economic legal redress unless the action is
24 maintained as a Class Action;
- 25 (e) There is a community of interest in obtaining appropriate legal and
26 equitable relief for the acts of unfair competition, statutory violations and
27 other improprieties, and in obtaining adequate compensation for the
28

1 damages and injuries which DEFENDANTS' actions have inflicted upon
2 the CALIFORNIA CLASS;

3 (f) There is a community of interest in ensuring that the combined assets of
4 DEFENDANTS are sufficient to adequately compensate the members of
5 the CALIFORNIA CLASS for the injuries sustained;

6 (g) DEFENDANTS have acted or refused to act on grounds generally
7 applicable to the CALIFORNIA CLASS, thereby making final class-wide
8 relief appropriate with respect to the CALIFORNIA CLASS as a whole;

9 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
10 the business records of DEFENDANTS; and,

11 (i) Class treatment provides manageable judicial treatment calculated to bring
12 a efficient and rapid conclusion to all litigation of all wage and hour
13 related claims arising out of the conduct of DEFENDANTS as to the
14 members of the CALIFORNIA CLASS.

15 35. DEFENDANTS maintain records from which the Court can ascertain and
16 identify by job title each of DEFENDANTS' employees who as have been intentionally
17 subjected to DEFENDANTS' conduct as herein alleged. PLAINTIFFS will seek leave to
18 amend the Complaint to include any additional job titles of similarly situated employees when
19 they have been identified.

20 **FIRST CAUSE OF ACTION**

21 **For Unlawful Business Practices**

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

23 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

27 37. DEFENDANTS are a "person" as that term is defined under Cal. Bus. and Prof.
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1 Code § 17021.

2 38. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
3 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
4 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
5 competition as follows:

6 Any person who engages, has engaged, or proposes to engage in unfair
7 competition may be enjoined in any court of competent jurisdiction. The court
8 may make such orders or judgments, including the appointment of a receiver, as
9 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.

10 Cal. Bus. & Prof. Code § 17203.

11 39. By the conduct alleged herein, DEFENDANTS have engaged and continue to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, and 2802, for which
15 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
16 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
17 competition, including restitution of wages wrongfully withheld.

18 40. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
19 unfair in that these practices violated public policy, are immoral, unethical, oppressive,
20 unscrupulous or substantially injurious to employees, and are without valid justification or
21 utility for which this Court should issue equitable and injunctive relief pursuant to Section
22 17203 of the California Business & Professions Code, including restitution of wages wrongfully
23 withheld.

24 41. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
25 fraudulent in that DEFENDANTS’ policy and practice failed to pay PLAINTIFFS, and other
26 members of the CALIFORNIA CLASS, minimum wages and overtime wages due for all time
27 worked, due to business practices that cannot be justified, pursuant to the applicable Cal. Lab.

1 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
2 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
3 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

4 42. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
5 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and
6 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
7 DEFENDANTS.

8 43. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
9 deceptive in that DEFENDANTS' policies, practices and procedures failed to provide
10 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

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

19 46. By and through the unlawful and unfair business practices described herein,
20 DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and
21 the other members of the CALIFORNIA CLASS and has deprived them of valuable rights and
22 benefits guaranteed by law and contract, all to the detriment of these employees and to the
23 benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete against
24 competitors who comply with the law.

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

3 48. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
4 to, and do, seek such relief as may be necessary to restore to them the money and property
5 which DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
7 unfair business practices, including earned but unpaid wages for all overtime worked.

8 49. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
11 engaging in any unlawful and unfair business practices in the future.

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

19
20 **SECOND CAUSE OF ACTION**

21 **For Failure To Pay Overtime Compensation**

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

23 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

27 52. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
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1 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
2 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
3 calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of
4 the CALIFORNIA CLASS and DEFENDANTS' failure to properly compensate the members
5 of the CALIFORNIA CLASS for overtime worked, including, work performed in excess of
6 eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

17 56. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and
18 CALIFORNIA CLASS Members were required, permitted or suffered by DEFENDANTS to
19 work for DEFENDANTS and were not paid for all the time they worked, including overtime
20 work. DEFENDANTS maintained a wage practice of paying PLAINTIFFS and the other
21 members of the CALIFORNIA CLASS without regard to the correct amount of overtime
22 worked and correct applicable overtime rate for the amount of overtime they worked. As set
23 forth herein, DEFENDANTS' policy and practice was to unlawfully and intentionally deny
24 timely payment of wages due for the overtime worked by PLAINTIFFS and the other members
25 of the CALIFORNIA CLASS, and DEFENDANTS in fact failed to pay these employees the
26 correct applicable overtime wages for all overtime worked.

27 57. DEFENDANTS' unlawful wage and hour practices manifested, without
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1 limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
2 policy and practice that denied accurate compensation to PLAINTIFFS and the other members
3 of the CALIFORNIA CLASS for all overtime worked, including, the work performed in excess
4 of eight (8) hours in a workday and/or forty (40) hours in any workweek.

5 58. In committing these violations of the California Labor Code, DEFENDANTS
6 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
7 consequently underpaid the actual time worked by PLAINTIFFS and other members of the
8 CALIFORNIA CLASS. DEFENDANTS acts in an illegal attempt to avoid the payment of all
9 earned wages, and other benefits in violation of the California Labor Code, the Industrial
10 Welfare Commission requirements and other applicable laws and regulations.

11 59. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
12 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
13 compensation for all overtime worked.

14 60. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
15 from the overtime requirements of the law. None of these exemptions are applicable to
16 PLAINTIFFS and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS
17 and the other members of the CALIFORNIA CLASS were not subject to a valid collective
18 bargaining agreement that would preclude the causes of action contained herein this Complaint.
19 Rather, the PLAINTIFFS bring this Action on behalf of themselves and the CALIFORNIA
20 CLASS based on DEFENDANTS' violations of non-negotiable, non-waiveable rights provided
21 by the State of California.

22 61. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and the other
23 members of the CALIFORNIA CLASS were paid less for time worked that they are entitled
24 to, constituting a failure to pay all earned wages.

25 62. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of
26 the CALIFORNIA CLASS overtime wages for the time they work which is in excess of the
27 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
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1 though PLAINTIFFS and the other members of the CALIFORNIA CLASS are required to
2 work, and do in fact work, overtime as to which DEFENDANTS failed to accurately record and
3 pay using the applicable overtime rate as evidenced by DEFENDANTS' business records and
4 witnessed by employees.

5 63. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
6 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the
7 true time they work, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
8 suffered and will continue to suffer an economic injury in amounts which are presently
9 unknown to them and which will be ascertained according to proof at trial.

10 64. DEFENDANTS knew or should have known that PLAINTIFFS and the other
11 members of the CALIFORNIA CLASS are under compensated for their overtime worked.
12 DEFENDANTS elected, either through intentional malfeasance or gross nonfeasance, to not
13 pay employees for their labor as a matter of company policy, practice and procedure, and
14 DEFENDANTS perpetrated this scheme by refusing to pay PLAINTIFFS and the other
15 members of the CALIFORNIA CLASS the applicable overtime rate.

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

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

8 9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Minimum Wages**

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

12 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

13 67. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
14 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
15 this Complaint..

16 68. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a
17 claim for DEFENDANTS' willful and intentional violations of the California Labor Code
18 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to
19 accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS
20 Members.

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

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

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

1 of suit.

2 72. DEFENDANTS maintained a wage practice of paying PLAINTIFFS and the
3 other members of the CALIFORNIA CLASS without regard to the correct amount of time
4 they work, including time spent engaging in work tasks while off the clock. To the extent
5 that these off-the-clock job tasks do not qualify for overtime premium payment,
6 DEFENDANTS failed to pay minimum wages for the time worked off-the-clock in violation
7 of Cal. Lab. Code §§ 1194, 1197, and 1197.1. As set forth herein, DEFENDANTS' policy
8 and practice was to unlawfully and intentionally deny timely payment of wages due to
9 PLAINTIFFS and the other members of the CALIFORNIA CLASS.

10 73. DEFENDANTS' unlawful wage and hour practices manifested, without
11 limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing
12 a policy and practice that denied accurate compensation to PLAINTIFFS and the other
13 members of the CALIFORNIA CLASS in regards to minimum wage pay.

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

20 75. As a direct result of DEFENDANTS' unlawful wage practices as alleged
21 herein, PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive
22 the correct minimum wage compensation for their time worked for DEFENDANTS.

23 76. During the CALIFORNIA CLASS PERIOD, DEFENDANTS required,
24 permitted or suffered PLAINTIFFS and CALIFORNIA CLASS Members to work without
25 paying them for all the time they were under DEFENDANTS' control. During the
26 CALIFORNIA CLASS PERIOD, PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS were paid less for time worked that they were entitled to,

1 constituting a failure to pay all earned wages.

2 77. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
3 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the
4 true time they work, PLAINTIFFS and the other members of the CALIFORNIA CLASS
5 have suffered and will continue to suffer an economic injury in amounts which are presently
6 unknown to them and which will be ascertained according to proof at trial.

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

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

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

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

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6 **FOURTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

13 82. During the CALIFORNIA CLASS PERIOD, from time to time,
14 DEFENDANTS failed to provide all the legally required off-duty meal breaks to
15 PLAINTIFFS and the other CALIFORNIA CLASS Members as required by the applicable
16 Wage Order and Labor Code. The nature of the work performed by PLAINTIFFS and
17 CALIFORNIA CLASS MEMBERS did not prevent these employees from being relieved of
18 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
19 work schedules and DEFENDANTS' loss prevention inspection policy, PLAINTIFFS and
20 other CALIFORNIA CLASS Members were from time to time not fully relieved of duty by
21 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
22 PLAINTIFFS and the CALIFORNIA CLASS Members with legally required meal breaks
23 prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records
24 from time to time. As a result, PLAINTIFFS and other members of the CALIFORNIA
25 CLASS therefore forfeited meal breaks without additional compensation and in accordance
26 with DEFENDANTS' corporate policy and practice.

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

5 84. As a proximate result of the aforementioned violations, PLAINTIFFS and
6 CALIFORNIA CLASS Members have been damaged in an amount according to proof at
7 trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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10 **FIFTH CAUSE OF ACTION**

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

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

13 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

14 85. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
15 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
16 this Complaint.

17 86. PLAINTIFFS and other CALIFORNIA CLASS Members were from time to
18 time required to work in excess of four (4) hours without being provided ten (10) minute
19 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
20 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
21 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
22 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts
23 worked of ten (10) hours or more. PLAINTIFFS and other CALIFORNIA CLASS
24 Members were also not provided with one hour wages in lieu thereof. As a result of their
25 rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were
26 periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS'
27 managers.
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87. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)

89. PLAINTIFFS, 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.

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

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

10 91. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her

11 employees with an accurate itemized wage statement in writing showing, among other things,

12 gross wages earned and all applicable hourly rates in effect during the pay period and the

13 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANTS

14 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct

15 gross and net wages earned. PLAINTIFFS and CALIFORNIA CLASS Members were paid on

16 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during

17 the pay period and the total hours worked, and the applicable pay period in which the wages

18 were earned pursuant to California Labor Code Section 226(a). The wage statements

19 DEFENDANTS provided to PLAINTIFFS and other CALIFORNIA CLASS Members failed

20 to identify such information. More specifically, the wage statements failed to identify the

21 accurate total hours worked each pay period. When the hours shown on the wage statements

22 were added up, they did not equal the actual total hours worked during the pay period. Aside

23 from the violations listed above in this paragraph, DEFENDANTS failed to issue to

24 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor

25 Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFFS and

26 the other members of the CALIFORNIA CLASS with wage statements which violated Cal.

27 Lab. Code § 226.

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

SEVENTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

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

As used in this article:

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

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

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

1 immediately.”

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

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

12 97. There was no definite term in PLAINTIFFS’ or any CALIFORNIA CLASS
13 Members’ employment contract.

14 98. Cal. Lab. Code § 203 provides:

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

20 99. The employment of PLAINTIFFS and many CALIFORNIA CLASS Members
21 has terminated and DEFENDANTS have not tendered payment of wages, to these employees
22 who missed meal and rest breaks, as required by law.

23 100. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
24 members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFFS
25 demand up to thirty days of pay as penalty for not paying all wages due at time of termination
26 for all employees who terminated employment during the CALIFORNIA CLASS PERIOD, and
27 demand an accounting and payment of all wages due, plus interest and statutory costs as
28 allowed by law.

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1 **EIGHTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 2802]**

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

8 102.. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

12 103. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
13 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS members for
14 required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.
15 DEFENDANTS failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS members for
16 expenses which included, but were not limited to, costs related to using their personal cellular
17 phones on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFFS and
18 other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal
19 cellular phones in order to perform work related job tasks. DEFENDANTS' policy and practice
20 was to not reimburse PLAINTIFFS and the CALIFORNIA CLASS members for expenses
21 resulting from using their personal cellular phones for DEFENDANTS within the course and
22 scope of their employment for DEFENDANTS. These expenses were necessary to complete
23 their principal job duties. DEFENDANTS is estopped by DEFENDANTS' conduct to assert
24 any waiver of this expectation. Although these expenses were necessary expenses incurred by
25 PLAINTIFFS and the CALIFORNIA CLASS members, DEFENDANTS failed to indemnify
26 and reimburse PLAINTIFFS and the CALIFORNIA CLASS members for these expenses as an
27 employer is required to do under the laws and regulations of California.

104. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred by themselves and the CALIFORNIA CLASS members in the discharge of their job duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

NINTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By All Plaintiffs and Against All DEFENDANTS)

105. PLAINTIFFS reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

107. Plaintiffs Matthew Ramirez, Adam Villasenor, Luis Flores, Steven Saevang, and Pedro Gutierrez , and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT, Pregis and all individuals who were employed by Defendant Manpower and assigned to

1 work at a Pregis facility in California who were classified as hourly non-exempt employees
2 (the "AGGRIEVED EMPLOYEES") at any time during the time period of February 2, 2020
3 through February 21, 2022 (the "PAGA PERIOD").

4 108. On October 26, 2020, Plaintiffs Matthew Ramirez, Adam Villasenor, Luis
5 Flores, Steven Saevang, and Pedro Gutierrez gave written notice by electronic mail to the
6 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
7 employer of the specific provisions of this code alleged to have been violated as required by
8 Labor Code § 2699.3. The statutory waiting period for Plaintiffs Matthew Ramirez, Adam
9 Villasenor, Luis Flores, Steven Saevang, and Pedro Gutierrez to add these allegations to the
10 Complaint has expired. As a result, pursuant to Section 2699.3, Matthew Ramirez, Adam
11 Villasenor, Luis Flores, Steven Saevang, and Pedro Gutierrez may now commence a
12 representative civil action under PAGA pursuant to Section 2699 as the proxies of the State
13 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

14 109. The policies, acts and practices heretofore described were and are an unlawful
15 business act or practice because DEFENDANTS (a) failed to provide Matthew Ramirez,
16 Adam Villasenor, Luis Flores, Steven Saevang, and Pedro Gutierrez and the other
17 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
18 record and provide legally required meal and rest periods, (c) failed to pay overtime wages,
19 (d) failed to pay minimum wages, (e) failed to provide wages when due, and (f) failed to
20 reimburse employees for required expenses, all in violation of the applicable Labor Code
21 sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7,
22 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
23 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial
24 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.
25 Plaintiffs Matthew Ramirez, Adam Villasenor, Luis Flores, Steven Saevang, and Pedro
26 Gutierrez hereby seek recovery of civil penalties as prescribed by the Labor Code Private
27 Attorney General Act of 2004 as the representatives of the State of California for the illegal
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1 conduct perpetrated on Plaintiffs Navarro, Ortega, Singletary and Terry and the other
2 AGGRIEVED EMPLOYEES.

3 110. All of the conduct and violations alleged herein occurred during the
4 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
5 affect Plaintiffs Navarro, Ortega, Singletary and Terry during the PAGA PERIOD, Plaintiffs
6 Navarro, Ortega, Singletary and Terry seek penalties for those violations that affected other
7 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR
8 12157 (Certified for Publication 12/19/18).

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10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFFS pray for judgment against each DEFENDANTS, jointly and
12 severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

- 14 A) That the Court certify the First, Second, Third, Fourth, Fifth, Sixth, Seventh,
15 and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class
16 action pursuant to Cal. Code of Civ. Proc. § 382;
- 17 B) An order temporarily, preliminarily and permanently enjoining and restraining
18 DEFENDANTS from engaging in similar unlawful conduct as set forth
19 herein;
- 20 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully
21 withheld from compensation due to PLAINTIFFS and the other members of
22 the CALIFORNIA CLASS; and,
- 23 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid
24 fund for restitution of the sums incidental to DEFENDANTS' violations due
25 to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
- 26 E) Compensatory damages, according to proof at trial, including compensatory
27 damages for minimum wages and overtime compensation due PLAINTIFFS
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1 and the other members of the CALIFORNIA CLASS, during the applicable
2 CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

3 F) Meal and rest period compensation pursuant to California Labor Code Section
4 226.7 and the applicable IWC Wage Order;

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

10 H) For liquidated damages pursuant to California Labor Code Sections 1194.2
11 and 1197;

12 I) The amount of the expenses PLAINTIFFS and each member of the
13 CALIFORNIA CLASS incurred in the course of their job duties, plus interest,
14 and costs of suit; and,

15 J) The wages of all terminated employees from the CALIFORNIA CLASS as a
16 penalty from the due date thereof at the same rate until paid or until an action
17 therefore is commenced, in accordance with Cal. Lab. Code § 203.

18 2. 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 3. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:

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

1 B) An award of attorneys' fees and cost of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code 2699.
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6 Dated: May 12, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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9 By: /s/ Nicholas J. De Blouw

10 Norman B. Blumenthal
Nicholas J. De Blouw

11 Attorneys for Plaintiffs
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