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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

34-2021-0029537 4

ERYN WHITE, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

ADVANCED HOME HEALTH, INC.,
California Corporation; ADVANCED HOME
HEALTH AND HOSPICE, INC., a California
Corporation; ADVANCED HOME HEALTH
NORTHBAY, INC., a California
Corporation; ADVANCED HOME HEALTH
SAN DIEGO, INC., a California 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 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 Plaintiff Eryn White (“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 Advanced Home Health, Inc. is a California corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial business in the
8 state of California.

9 2. Defendant Advanced Home Health and Hospice, Inc. is a California corporation
10 that at all relevant times mentioned herein conducted and continues to conduct substantial
11 business in the state of California.

12 3. Defendant Advanced Home Health Northbay, Inc. is a California corporation that
13 at all relevant times mentioned herein conducted and continues to conduct substantial business
14 in the state of California.

15 4. Defendant Advanced Home Health San Diego, Inc. is a California corporation that
16 at all relevant times mentioned herein conducted and continues to conduct substantial business
17 in the state of California.

18 5. PLAINTIFF alleges there has existed a unity of interest and ownership between
19 Defendants Advanced Home Health, Inc., Advanced Home Health and Hospice, Inc., Advanced
20 Home Health Northbay, Inc., and Advanced Home Health San Diego, Inc. such that any
21 individuality and separateness between the entities has ceased and all Defendants are referred
22 to herein as “DEFENDANT.”

23 6. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
24 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
25 and ownership between DEFENDANT such that any individuality and separateness between
26 the entities has ceased. Advanced Home Health, Inc., Advanced Home Health and Hospice,
27 Inc., Advanced Home Health Northbay, Inc., and Advanced Home Health San Diego, Inc. and
28 DOES 1-10 are therefore alter egos of each other. Adherence to the fiction of the separate

1 existence of DEFENDANT would permit an abuse of the corporate privilege, and would
2 promote injustice by protecting DEFENDANT from liability for the wrongful acts committed
3 by them.

4 7. PLAINTIFF further alleges that DEFENDANTS are the alter egos of each other
5 for the following reasons:

6 (A) On the California Secretary of State's website
7 (<https://businesssearch.sos.ca.gov/>) Advanced Home Health, Inc.,
8 Advanced Home Health and Hospice, Inc., Advanced Home Health
9 Northbay, Inc., and Advanced Home Health San Diego, Inc. have the same
10 entity address and/or mailing address and/or Agent for Service of Process;
11 and,

12 (B) On information and belief Advanced Home Health, Inc., Advanced Home
13 Health and Hospice, Inc., Advanced Home Health Northbay, Inc., and
14 Advanced Home Health San Diego, Inc. utilize the same standardized
15 employment forms and issue the same employment policies; and,

16 8. PLAINTIFF was employed by DEFENDANT from November of 2019 to October
17 of 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
18 an hourly basis, and entitled to the legally required meal and rest periods and payment of
19 minimum and overtime wages due for all time worked.

20 9. PLAINTIFF brings this Class Action on behalf of himself and a California class,
21 defined as all individuals who are or previously were employed by Advanced Home Health,
22 Inc., and/or Advanced Home Health and Hospice, Inc., and/or Advanced Home Health
23 Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and classified as non-exempt
24 employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years
25 prior to the filing of this Complaint and ending on the date as determined by the Court (the
26 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
27 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

28 10. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA

1 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
2 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy and practice
3 which failed to lawfully compensate these employees. DEFENDANT's uniform policy and
4 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
5 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members
6 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA
7 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
8 named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been
9 economically injured by DEFENDANT's past and current unlawful conduct, and all other
10 appropriate legal and equitable relief.

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

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

28 ///

THE CONDUCT

13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. DEFENDANT required PLAINTIFF and the CALIFORNIA CLASS Members to work off the clock without paying them for all the time they performed post-shift duties, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. Specifically, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS members to clock out of DEFENDANT's timekeeping system and then return to their homes in order to perform additional paperwork for DEFENDANT, including but not limited to drafting "treatment notes" that document their personal therapy sessions they performed that work day. DEFENDANT failed to pay PLAINTIFF and CALIFORNIA CLASS Members for the time they spent working after they had already clocked out of DEFENDANT's timekeeping system at the end of their work shifts. Additionally, from time to time, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments. Further, PLAINTIFF and other members of the CALIFORNIA CLASS from time to time were not paid wages for all time worked, including overtime wages, such that in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by from time to time working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

1 14. Industrial Welfare Commission Wage Order 4-2001 provides: “Every employer
2 shall pay to each employee, on the established payday for the period involved, not less than the
3 applicable minimum wage for all hours worked in the payroll period, whether the remuneration
4 is measured by time, piece, commission, or otherwise.” “Hours worked” is defined in the Wage
5 Order as “the time during which an employee is subject to the control of an employer, and
6 includes all the time the employee is suffered or permitted to work, whether or not required to
7 do so.” Here, PLAINTIFF and CALIFORNIA CLASS Members were entitled to separate
8 hourly compensation for time spent performing other non-therapy tasks directed by
9 DEFENDANT during their work shifts.

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

20 16. 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. As a result of their rigorous work schedules,

1 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
2 proper rest periods by DEFENDANT and DEFENDANT's managers. Additionally, the
3 applicable California Wage Order requires employers to provide employees with off-duty rest
4 periods, which the California Supreme Court defined as time during which an employee is
5 relieved from all work related duties and free from employer control. In so doing, the Court
6 held that the requirement under California law that employers authorize and permit all
7 employees to take rest period means that employers must relieve employees of all duties and
8 relinquish control over how employees spend their time which includes control over the
9 locations where employees may take their rest period. Employers cannot impose controls that
10 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
11 DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
12 unconstrained walks and was unlawful based on Defendant's rule which stated PLAINTIFF and
13 other CALIFORNIA CLASS Members could not leave the work premises during their rest
14 period. Additionally, DEFENDANT failed to provide all the legally required paid, off-duty rest
15 periods to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the
16 applicable Wage Order and Labor Code. DEFENDANT did not have a policy or practice which
17 provided or recorded all the legally required paid, off-duty rest periods to PLAINTIFF and the
18 other CALIFORNIA CLASS Members when these employees were paid on a piece rate basis
19 to perform their therapy sessions. As a result, DEFENDANT's failure to provide PLAINTIFF
20 and the CALIFORNIA CLASS Members with all the legally required off-duty, unpaid meal
21 periods and all the legally required off-duty, paid rest periods is evidenced by DEFENDANT's
22 business records.

23 17. DEFENDANT also failed to provide PLAINTIFF and the other members of the
24 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
25 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
26 every employer shall furnish each of his or her employees with an accurate itemized wage
27 statement in writing showing, among other things, gross wages earned and all applicable hourly
28 rates in effect during the pay period and the corresponding amount of time worked at each

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

6 18. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
7 employment are due and payable twice during each calendar month, on days designated in
8 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
9 requires employers to pay employees all wages owed within seven (7) days of the close of the
10 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
11 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
12 the payroll period.

13 19. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
14 to collect or receive from an employee any part of wages theretofore paid by said employer to
15 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
16 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
17 payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
18 all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA
19 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
20 each applicable pay period and upon termination. PLAINTIFF and members of the
21 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
22 according to proof, related penalties, interest, attorney fees and costs.

23 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
24 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically,
25 PLAINTIFF and other non-exempt employees earn non-discretionary remuneration. Rather
26 than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF
27 and other CALIFORNIA CLASS Members at their base rates of pay.

28 21. DEFENDANT intentionally and knowingly failed to reimburse and indemnify

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

10 22. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
11 Members as a business expense, were required by DEFENDANT to use their own personal
12 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
13 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
14 cost associated with the use of their personal cellular phones and personal vehicles for
15 DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
16 were required by DEFENDANT to use their personal cellular phones to respond to managers
17 while off the clock (which also results in minimum wage and overtime violations). As a result,
18 in the course of their employment with DEFENDANT, PLAINTIFF and other members of the
19 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
20 limited to, costs related to the use of their personal cellular phones and personal vehicles all on
21 behalf of and for the benefit of DEFENDANT.

22 23. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
24 a matter of company policy, practice and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal
26 and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully
27 avoid the payment for all time worked as required by California law which allows
28 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied

1 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

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

15 25. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
16 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
17 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
18 did not have a policy or practice which provided timely off-duty meal and rest breaks to
19 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
20 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
21 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
22 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
23 DEFENDANT’s business records. DEFENDANT also required PLAINTIFF to work off the
24 clock without paying him for all the time he was working for DEFENDANT and performing
25 post-shift duties, specifically by failing to provide enough labor hours to accomplish all the job
26 tasks that DEFENDANT expected PLAINTIFF to complete on a daily and/or weekly basis. The
27 amount in controversy for PLAINTIFF individually does not exceed the sum or value of
28 \$75,000. To date, DEFENDANT has not fully paid PLAINTIFF for all his wages still owed

1 to him or any penalties owed to her under California Labor Code § 203.

2
3 **JURISDICTION AND VENUE**

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

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

14
15 **THE CALIFORNIA CLASS**

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

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

1 30. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 wilfully, engages in a practice whereby DEFENDANT fails to record all meal and rest breaks
5 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT
6 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
7 to permit this work.

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

17 32. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 33. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

21 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
22 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
23 deceptively having in place company policies, practices and procedures
24 that failed to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked minimum wages owed and
26 overtime wages owed for work performed by these employees;

27 (b) Committing an act of unfair competition in violation of the UCL, by
28 failing to provide the PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with the legally required meal and rest periods;
2 and,

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

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

- 10 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
11 that the joinder of all such persons is impracticable and the disposition of
12 their claims as a class will benefit the parties and the Court;
- 13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
14 that are raised in this Complaint are common to the CALIFORNIA
15 CLASS will apply uniformly to every member of the CALIFORNIA
16 CLASS;
- 17 (c) The claims of the representative PLAINTIFF are typical of the claims of
18 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
19 other members of the CALIFORNIA CLASS, is classified as a non-
20 exempt employee paid on an hourly basis who has been subjected to the
21 DEFENDANT's deceptive practice and policy which failed to provide the
22 legally required meal and rest periods to the CALIFORNIA CLASS and
23 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
24 CLASS. PLAINTIFF sustained economic injury as a result of
25 DEFENDANT's employment practices. PLAINTIFF and the members of
26 the CALIFORNIA CLASS were and are similarly or identically harmed
27 by the same unlawful, deceptive, unfair and pervasive pattern of
28 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

B. Adjudications with respect to individual members of the

CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

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

(c) The members of the CALIFORNIA CLASS are so numerous that it is

1 impractical to bring all members of the CALIFORNIA CLASS before the
2 Court;

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

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

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

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

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

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

23 37. DEFENDANT maintains records from which the Court can ascertain and identify
24 by job title each of DEFENDANT's employees who have been intentionally subjected to
25 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will
26 seek leave to amend the Complaint to include any additional job titles of similarly situated
27 employees when they have been identified.
28

THE CALIFORNIA LABOR SUB-CLASS

38. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by Advanced Home Health, Inc., and/or Advanced Home Health and Hospice, Inc., and/or Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. in California (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

39. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoys the benefit of this work, requires employees to perform this work and permits or suffers to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

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

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

- 20 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
21 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
22 CLASS all wages due for overtime worked, for which DEFENDANT is
23 liable pursuant to Cal. Lab. Code § 1194;
- 24 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
25 accurately pay PLAINTIFF and the members of the CALIFORNIA
26 LABOR SUB-CLASS the correct minimum wage pay for which
27 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 28 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the

1 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
2 itemized statement in writing showing the corresponding correct amount
3 of wages earned by the employee; and,

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

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

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

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

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

21 (c) The claims of the representative PLAINTIFF are typical of the claims of
22 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
23 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
24 is a non-exempt employee paid on an hourly basis who has been subjected
25 to the DEFENDANT's practice and policy which fails to pay the correct
26 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
27 PLAINTIFF sustained economic injury as a result of DEFENDANT's
28 employment practices. PLAINTIFF and the members of the

CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

1 LABOR SUB-CLASS, making appropriate class-wide relief with respect
2 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
3 DEFENDANT uniformly fails to pay all wages due. Including the correct
4 wages for all time worked by the members of the CALIFORNIA LABOR
5 SUB-CLASS as required by law;

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

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

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

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

26 B. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28 matter be dispositive of the interests of the other members

not parties to the adjudication or substantially impair or
impede their ability to protect their interests;

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

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

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

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

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

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

- 1 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
2 Members, will not be able to obtain effective and economic legal redress
3 unless the action is maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
5 equitable relief for the acts of unfair competition, statutory violations and
6 other improprieties, and in obtaining adequate compensation for the
7 damages and injuries which DEFENDANT's actions have inflicted upon
8 the CALIFORNIA LABOR SUB-CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of
11 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally applicable
13 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
14 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
15 CLASS as a whole;
- 16 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
17 ascertainable from the business records of DEFENDANT. The
18 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
19 CLASS Members who worked for DEFENDANT in California at any
20 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 21 (i) Class treatment provides manageable judicial treatment calculated to bring
22 a efficient and rapid conclusion to all litigation of all wage and hour
23 related claims arising out of the conduct of DEFENDANT as to the
24 members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

19 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California
22 Labor Code including Sections 204, 210, 226.7, 246, 248.5, 510, 512, 1194, 1197, 1197.1, 1198
23 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
24 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
25 constitute unfair competition, including restitution of wages wrongfully withheld.

26 51. By the conduct alleged herein, DEFENDANT’s practices are unlawful and unfair
27 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous
28 or substantially injurious to employees, and are without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
2 California Business & Professions Code, including restitution of wages wrongfully withheld.

3 52. By the conduct alleged herein, DEFENDANT's practices are deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice fails to provide the legally
5 mandated meal and rest periods, and the required amount of compensation for missed meal and
6 rest periods, reporting time pay, and overtime and minimum wages owed, due to a business
7 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
8 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
9 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
10 § 17203, including restitution of wages wrongfully withheld.

11 53. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
12 and deceptive in that DEFENDANT's employment practices cause PLAINTIFF and the other
13 members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANT.

15 54. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
16 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to provide
17 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
18 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

27 57. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
2 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

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

15 60. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

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

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1 result of implementing a uniform policy and practice that denies accurate compensation to
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
3 minimum wage pay.

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

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

14 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
15 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked that
16 they are entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to
17 accurately pay the PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS the
18 wages for the time they work in accordance with 1197 & 1197.1, even though the PLAINTIFF
19 and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly required,
20 permitted or suffered to work, and do in fact work, off the clock time as to which
21 DEFENDANT fails to accurately record and pay as evidenced by DEFENDANT's business
22 records and witnessed by employees.

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

28 73. DEFENDANT knew or should have known that PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
2 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
3 to not pay employees for their labor as a matter of uniform company policy, practice and
4 procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the
5 other members of the CALIFORNIA LABOR SUB-CLASS the correct reporting time pay and
6 minimum wages for their time worked.

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

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

21
22 **THIRD CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

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

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

27 76. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
28 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs

1 of this Complaint.

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

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

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

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

19 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
20 CALIFORNIA LABOR SUB-CLASS Members are required, permitted or suffered by
21 DEFENDANT to work for DEFENDANT and are not paid for all the time they work, including
22 overtime work.

23 82. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
25 result of implementing a uniform policy and practice that failed to accurately record overtime
26 work by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied
27 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
28 SUB-CLASS for overtime work, including, the overtime work performed in excess of eight (8)

1 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
2 workweek.

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

9 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
11 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
12 including overtime work.

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

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

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

27 88. DEFENDANT fails to accurately pay the PLAINTIFF and the other members of
28 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was

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

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

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

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

26 92. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
28 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided

1 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
2 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
3 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

4
5 **FOURTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

28 95. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
2 CLASS Members who are not provided a meal period, in accordance with the applicable Wage
3 Order, one additional hour of compensation at each employee's regular rate of pay for each
4 workday that a meal period was not provided.

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

9
10 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

28 99. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

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

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

9
10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

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

20 (1) gross wages earned,

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

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

27 (4) all deductions, provided that all deductions made on written orders of the employee
28 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.

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

21 104. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code
22 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
23 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended
24 calculating the correct wages for all missed meal and rest breaks and the amount of employment
25 taxes which were not properly paid to state and federal tax authorities. These damages are
26 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
28 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each

1 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
2 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
3 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

4
5 **SEVENTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code § 2802]**

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

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

13 106. Cal. Lab. Code § 2802 provides, in relevant part, that:

14 An employer shall indemnify his or her employee for all necessary
15 expenditures or losses incurred by the employee in direct consequence of the
16 discharge of his 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.

17 107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
18 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
19 CLASS members for required expenses incurred in the discharge of their job duties for
20 DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFF and the
21 CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not
22 limited to, costs related to using their personal cellular phones and personal vehicles all on
23 behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
24 CALIFORNIA LABOR SUB-CLASS Members are required by DEFENDANT to use their
25 personal cell phones to respond to work related issues. DEFENDANT's policy, practice and
26 procedure is to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
27 members for expenses resulting from using their personal cellular phones and personal
28

1 vehicles for DEFENDANT within the course and scope of their employment for
2 DEFENDANT. These expenses are necessary to complete their principal job duties.
3 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
4 expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and
5 the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT fails to indemnify and
6 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
7 expenses as an employer is required to do under the laws and regulations of California.

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

12 **EIGHTH CAUSE OF ACTION**

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

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

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

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

20 110. Cal. Lab. Code § 200 provides, in relevant part, that:

21 As used in this article:

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

24 (b) "Labor" includes labor, work, or service whether rendered or
25 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.

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

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

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

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

14 114. Cal. Lab. Code § 203 provides, in relevant part, that:

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
17 employee who is discharged or who quits, the wages of the employee shall
18 continue as a penalty from the due date thereof at the same rate until paid
19 or until an action therefor is commenced; but the wages shall not continue
20 for more than 30 days.

21 115. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
22 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
23 owed as required by law.

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

24 **NINTH CAUSE OF ACTION**

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

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

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

28 117. PLAINTIFF realleges and incorporates by reference, as though fully set forth

1 herein, the prior paragraphs of this Complaint.

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

12 119. PLAINTIFF, and such persons that may be added from time to time who
13 satisfy the requirements and exhaust the administrative procedures under the Private
14 Attorney General Act, brings this Representative Action on behalf of the State of California
15 with respect to himself and all individuals who worked for Advanced Home Health, Inc.,
16 and/or Advanced Home Health and Hospice, Inc., and/or Advanced Home Health Northbay,
17 Inc. and/or Advanced Home Health San Diego, Inc. and classified as non-exempt employees
18 (the "AGGRIEVED EMPLOYEES") during the time period of September 24, 2019 until a
19 date as determined by the Court (the "PAGA PERIOD").

20 120. On September 24, 2020, PLAINTIFF gave written notice by electronic mail to
21 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
22 employer of the specific provisions of this code alleged to have been violated as required by
23 Labor Code § 2699.3. On October 8, 2020, PLAINTIFF gave amended written notice by
24 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
25 certified mail to the employer of the specific provisions of this code alleged to have been
26 violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFF
27 to add these allegations to the Complaint has expired. As a result, pursuant to Section
28 2699.3, PLAINTIFF may now commence a representative civil action under PAGA

1 pursuant to Section 2699 as the proxy of the State of California with respect to all
2 AGGRIEVED EMPLOYEES as herein defined.

3 121. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
5 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
6 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
7 wages, (d) failed to pay minimum wages, (e) failed to provide wages when due, and (f)
8 failed to reimburse employees for required expenses, all in violation of the applicable Labor
9 Code sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
10 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
11 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial
12 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹

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

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

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
23 severally, as follows:

24 1. On behalf of the CALIFORNIA CLASS:

25 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
26

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

CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;
- D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and

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costs of suit; and,

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

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

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

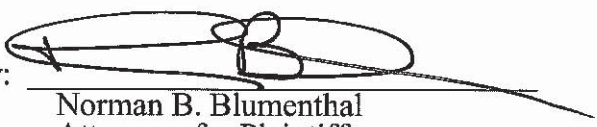
4. On all claims:

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

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

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

Dated: February 25, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 

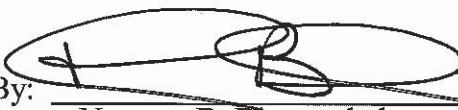
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: February 25, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff