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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

05/17/2022

Clerk of the Court

BY: JUDITH NUNEZ

Deputy Clerk

Attorneys for Plaintiffs MATTHEW LUCCHESI and JULIO CHAVEZ

Additional Counsel Listed in Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

MATTHEW LUCCHESI, JULIO CHAVEZ
and DAVID CHANG, individuals, on behalf
of themselves and on behalf of all persons
similarly situated,

Plaintiff,

vs.

KONE INC., a Corporation ; and DOES 1
through 50, inclusive,

Defendants.

Case No. **CGC-20-588225**

**SECOND AMENDED 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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO REIMBURSE BUSINESS EXPENSES IN VIOLATION OF CAL. LAB. CODE §§ 2800, 2802;
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*] and,
10. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *et seq.*

DEMAND FOR A JURY TRIAL

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1 Plaintiff Matthew Lucchese, Julio Chavez, and David Chang (“PLAINTIFFS”),
2 individuals, on behalf of themselves and all other similarly situated current and former
3 employees alleges on information and belief, except for their own acts and knowledge which
4 are based on personal knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant Kone Inc. (“DEFENDANT”) is a corporation that at all relevant times
8 mentioned herein conducted and continues to conduct substantial business in the state of
9 California.

10 2. DEFENDANT provides elevators, escalators and automatic building doors, as
11 well as solutions for maintenance and modernization to add value to buildings throughout their
12 life cycle.

13 3. Plaintiff Lucchese has been employed by DEFENDANT in California since June
14 of 2016 and has been at all times classified by DEFENDANT as a non-exempt employee, paid
15 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
16 minimum and overtime wages due for all time worked.

17 4. Plaintiff Chavez was employed by DEFENDANT in California from April of
18 2019 until November of 2020 and was at all times classified by DEFENDANT as a non-exempt
19 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
20 payment of minimum and overtime wages due for all time worked.

21 5. Plaintiff Chang was employed by DEFENDANT in California from September
22 of 2019 until October of 2021 and was at all times classified by DEFENDANT as a non-exempt
23 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
24 payment of minimum and overtime wages due for all time worked.

25 6. PLAINTIFFS bring this Class Action on behalf of themselves and a California
26 class, defined as all individuals who are or previously were employed by DEFENDANT in
27 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
28 during the period beginning four (4) years prior to the filing of this Complaint and ending on

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

4 7. PLAINTIFFS bring this Class Action on behalf of themselves and a
5 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
6 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and
7 practice which failed to lawfully compensate these employees. DEFENDANT's policy and
8 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
9 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members
10 of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
11 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
12 named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
13 economically injured by DEFENDANT's past and current unlawful conduct, and all other
14 appropriate legal and equitable relief.

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

24 9. The agents, servants and/or employees of the Defendants and each of them acting
25 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
26 agent, servant and/or employee of the Defendants, and personally participated in the conduct
27 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
28 Consequently, the acts of each Defendant are legally attributable to the other Defendants and

1 all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendants' agents, servants and/or employees.

4 5 **THE CONDUCT**

6 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
7 an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
8 CALIFORNIA CLASS Members for the actual time these employees worked each day.
9 DEFENDANT engaged in the unilateral modification of PLAINTIFFS' and CALIFORNIA
10 CLASS Members' time records to avoid paying meal break penalties and proper wages to these
11 employees. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
12 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
13 meaning the time during which an employee is subject to the control of an employer, including
14 all the time the employee is suffered or permitted to work. DEFENDANT requires
15 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the
16 time they are under DEFENDANT's control. Specifically, DEFENDANT requires
17 PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS' off-duty
18 meal break. PLAINTIFFS are from time to time interrupted by work assignments while clocked
19 out for what should have been PLAINTIFFS' off-duty meal break. Additionally, PLAINTIFFS
20 and CALIFORNIA CLASS Members clock out of DEFENDANT's timekeeping system, in
21 order to perform additional work for DEFENDANT as required to meet DEFENDANT's job
22 requirements. DEFENDANT's policy and practice not to pay PLAINTIFFS and other
23 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
24 business records.

25 11. State and federal law provides that employees must be paid overtime and meal and
26 rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and
27 other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay
28 that is tied to specific elements of an employee's performance.

1 12. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
2 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
3 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
4 performance for DEFENDANT. The non-discretionary incentive program provided all
5 employees paid on an hourly basis with incentive compensation when the employees met the
6 various performance goals set by DEFENDANT. However, when calculating the regular rate
7 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and other
8 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation
9 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
10 meal and rest break premium pay. Management and supervisors described the incentive
11 program to potential and new employees as part of the compensation package. As a matter of
12 law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA CLASS
13 Members must be included in the "regular rate of pay." The failure to do so has resulted in a
14 underpayment of overtime compensation and meal and rest break premium pay to PLAINTIFFS
15 and other CALIFORNIA CLASS Members by DEFENDANT.

16 13. As a result of their rigorous work schedules, PLAINTIFFS and other
17 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off
18 duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFFS and
19 other CALIFORNIA CLASS Members are required from time to time to perform work as
20 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
21 meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFFS and
22 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
23 which these employees are required by DEFENDANT to work ten (10) hours of work.
24 PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
25 without additional compensation and in accordance with DEFENDANT's corporate policy and
26 practice.

27 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
28 CALIFORNIA CLASS Members are also required from time to time to work in excess of four

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

19 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately
20 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
21 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
22 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
23 all time worked, meaning the time during which an employee was subject to the control of an
24 employer, including all the time the employee was permitted or suffered to permit this work.
25 DEFENDANT requires these employees to work off the clock without paying them for all the
26 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
27 known that PLAINTIFFS and the other members of the CALIFORNIA CLASS are under
28 compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS

1 Members forfeit time worked by working without their time being accurately recorded and
2 without compensation at the applicable minimum wage and overtime wage rates. To the extent
3 that the time worked off the clock does not qualify for overtime premium payment,
4 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
5 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

6 16. DEFENDANT routinely underpaid sick pay wages to PLAINTIFFS and other
7 members of the CALIFORNIA CLASS by failing to pay such wages at the regular rate of pay.
8 Specifically, PLAINTIFFS and other members of the CALIFORNIA CLASS regularly earn
9 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
10 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
11 pay to PLAINTIFFS and other members of the CALIFORNIA CLASS at their base rates of pay.

12 17. From time to time, DEFENDANT also fails to provide PLAINTIFFS and the
13 other members of the CALIFORNIA CLASS with complete and accurate wage statements
14 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
15 Code § 226 provides that every employer shall furnish each of his or her employees with an
16 accurate itemized wage statement in writing showing, among other things, gross wages earned
17 and all applicable hourly rates in effect during the pay period and the corresponding amount of
18 time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing
19 to identify the correct rates of pay and number of hours worked, including for the “Dir. Lab
20 1.0” “Dir. Lab 1.5.0 Dir. Lab 2.0” “Undist. Lab 1.0” “Undist. Lab 1.5” “Undist. Lab 2.0” and
21 “FLD Train 1.0” items of pay, which are wage payments. In addition, whenever sick pay wages
22 are underpaid to PLAINTIFFS and the other members of the CALIFORNIA CLASS,
23 DEFENDANT failed to furnish wage statements that accurately show and itemize applicable
24 hourly rates for sick time taken. Notably, the wage statements issued to PLAINTIFFS and the
25 other members of the CALIFORNIA CLASS provided for sick time at a rate lower than their
26 regular rate of pay in violation of California Labor Code Sections 203 and 204. Aside, from the
27 violations listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFFS an
28 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

1 As a result, DEFENDANT from time to time provides PLAINTIFFS and the other members of
2 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

3 18. Specifically as to PLAINTIFFS, DEFENDANT fails to provide all the legally
4 required off-duty meal and rest breaks to them as required by the applicable Wage Order and
5 Labor Code and failed to pay them all minimum and overtime wages due to them.
6 DEFENDANT does not have a policy or practice which provided timely off-duty meal and rest
7 breaks to PLAINTIFFS and also fails to compensate PLAINTIFFS for their missed meal and
8 rest breaks. The nature of the work performed by the PLAINTIFFS does not prevent them from
9 being relieved of all of his duties for the legally required off-duty meal periods. As a result,
10 DEFENDANT's failure to provide PLAINTIFFS with the legally required meal periods is
11 evidenced by DEFENDANT's business records.

12 19. Furthermore, specifically as to Plaintiff Lucchese, DEFENDANT failed to
13 properly maintain standard safety measures at job sites as well as on work Machinery. As such,
14 Plaintiff Lucchese was placed in a constant risk of harm while performing his job duties for
15 DEFENDANT. In March of 2020, Plaintiff Lucchese informed DEFENDANT about such
16 safety issues, but to no avail. In or around March of 2020, and continuing through out the rest
17 of Plaintiff Lucchese's employment, Plaintiff Lucchese engaged in protected activity by
18 complaining to DEFENDANT of DEFENDANT's failure to maintain compliant safety
19 standards, including, but not limited to, DEFENDANT's failure to maintain the safety of work
20 machines on DEFENDANT's job sites, and DEFENDANT's insistence on jeopardizing public
21 safety and worker safety in order to accommodate the best interests of DEFENDANT itself.
22 As a direct consequence of Plaintiff Lucchese's complaints to DEFENDANT, DEFENDANT
23 retaliated against Plaintiff Lucchese by removing him from the job site and demoting him to a
24 helper position from the mechanic position which resulted in lost wages. The amount in
25 controversy for Plaintiff Lucchese individually does not exceed the sum or value of \$75,000.

26 27 **JURISDICTION AND VENUE**

28 20. This Court has jurisdiction over this Action pursuant to California Code of Civil

1 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
2 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
3 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

9
10 **THE CALIFORNIA CLASS**

11 22. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
12 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
13 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
14 all individuals who are or previously were employed by DEFENDANT in California and
15 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
16 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
17 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
18 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
19 (\$5,000,000.00).

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

23 24. DEFENDANT, as a matter of company policy, practice and procedure, and in
24 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
27 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
28 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and

1 permits or suffers to permit this work.

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

11 26. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
12 CLASS Members is impracticable.

13 27. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
14 law by:

- 15 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
16 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
17 deceptively having in place company policies, practices and procedures
18 that failed to record and pay PLAINTIFFS and the other members of the
19 CALIFORNIA CLASS for all time worked, including minimum wages
20 owed and overtime wages owed for work performed by these employees;
21 and,
- 22 (b) Committing an act of unfair competition in violation of the UCL, by
23 failing to provide the PLAINTIFFS and the other members of the
24 CALIFORNIA CLASS with the legally required meal and rest periods.
- 25 (c) Committing an act of unfair competition in violation of the California
26 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and
27 Cal. Lab. Code §§ 201-204, 233, 246 and 248.5 by failing to pay
28 PLAINTIFFS and the CALIFORNIA CLASS members for all wages for

1 sick time at the regular rate of pay and for all time worked off the clock.

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

- 4 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
5 that the joinder of all such persons is impracticable and the disposition of
6 their claims as a class will benefit the parties and the Court;
- 7 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
8 that are raised in this Complaint are common to the CALIFORNIA
9 CLASS will apply to every member of the CALIFORNIA CLASS;
- 10 (c) The claims of the representative PLAINTIFFS are typical of the claims of
11 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
12 other members of the CALIFORNIA CLASS, were classified as a non-
13 exempt employee paid on an hourly basis who was subjected to the
14 DEFENDANT's deceptive practice and policy which failed to provide the
15 legally required meal and rest periods, failure to provide the correct wages
16 for sick time taken and overtime worked, and failed to provide
17 compensation for all time worked off the clock to the CALIFORNIA
18 CLASS and thereby underpaid compensation to PLAINTIFFS and
19 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
20 result of DEFENDANT's employment practices. PLAINTIFFS and the
21 members of the CALIFORNIA CLASS were and are similarly or
22 identically harmed by the same unlawful, deceptive and unfair misconduct
23 engaged in by DEFENDANT; and,
- 24 (d) The representative PLAINTIFFS will fairly and adequately represent and
25 protect the interest of the CALIFORNIA CLASS, and have retained
26 counsel who are competent and experienced in Class Action litigation.
27 There are no material conflicts between the claims of the representative
28 PLAINTIFFS and the members of the CALIFORNIA CLASS that would

1 make class certification inappropriate. Counsel for the CALIFORNIA
2 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
3 Members.

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

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

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

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

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

24 1) With respect to the First Cause of Action, the final relief on behalf
25 of the CALIFORNIA CLASS sought does not relate exclusively to
26 restitution because through this claim PLAINTIFFS seek
27 declaratory relief holding that the DEFENDANT's policy and
28 practices constitute unfair competition, along with declaratory

1 relief, injunctive relief, and incidental equitable relief as may be
2 necessary to prevent and remedy the conduct declared to constitute
3 unfair competition;

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

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

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

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

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

28 3) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA CLASS Members will avoid asserting
2 their legal rights out of fear of retaliation by DEFENDANT, which
3 may adversely affect an individual's job with DEFENDANT or
4 with a subsequent employer, the Class Action is the only means to
5 assert their claims through a representative; and,

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

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

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

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations and
3 other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
10 to the CALIFORNIA CLASS, thereby making final class-wide relief
11 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 12 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
13 the business records of DEFENDANT; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to bring
15 a efficient and rapid conclusion to all litigation of all wage and hour
16 related claims arising out of the conduct of DEFENDANT as to the
17 members of the CALIFORNIA CLASS.

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

23
24 **THE CALIFORNIA LABOR SUB-CLASS**

25 32. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth and Seventh
26 causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
27 CLASS who are or previously were employed by DEFENDANT in California (the
28 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to

1 the filing of the complaint and ending on the date as determined by the Court (the
2 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
3 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
4 Members is under five million dollars (\$5,000,000.00).

5 33. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
6 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
7 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
8 to correctly calculate compensation for the time worked by PLAINTIFFS and the other
9 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these
10 employees, even though DEFENDANT enjoyed the benefit of this work, required employees
11 to perform this work and permitted or suffered to permit this work. DEFENDANT has denied
12 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
13 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
14 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
15 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
16 accordingly.

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

22 35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 26 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA LABOR SUB-
28 CLASS for missed meal and rest breaks in violation of the California

Labor Code and California regulations and the applicable California Wage Order;

- (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) Whether DEFENDANT failed to correctly calculate and pay compensation due to members of the CALIFORNIA LABOR SUBCLASS for missed meal and rest breaks and for sick time taken at the regular rate of pay and for all time worked off the clock;
- (e) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (f) Whether DEFENDANT's conduct was willful.

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

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;

- 1 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
2 PLAINTIFFS and the other members of the CALIFORNIA LABOR
3 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
4 minute meal breaks and the legally required off-duty rest breaks;
- 5 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
6 when an employee is discharged or quits from employment, the employer
7 must pay the employee all wages due without abatement, by failing to
8 tender full payment and/or restitution of wages owed or in the manner
9 required by California law to the members of the CALIFORNIA LABOR
10 SUB-CLASS who have terminated their employment; and,
- 11 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
12 and the CALIFORNIA LABOR SUB-CLASS members with necessary
13 expenses incurred in the discharge of their job duties.
- 14 (g) Violating Cal. Lab. Code §§ 201-204, 233, 246 and 248.5, which provides
15 that when an employee is discharged or quits from employment, the
16 employer must pay the employee all wages due without abatement, by
17 failing to tender full payment and/or restitution of wages owed or in the
18 manner required by California law to the members of the CALIFORNIA
19 LABOR SUB-CLASS who have terminated their employment by failing
20 to pay PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
21 members for all wage for sick time taken at the regular rate of pay and for
22 all time worked off the clock.

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

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

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

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

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

SUB-CLASS will create the risk of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

41. 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.

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

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

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

Cal. Bus. & Prof. Code § 17203.

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

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

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

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

22 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
23 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
24 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
25 DEFENDANT required by Cal. Lab. Code §§ 201-204, 210, 510, 512, 1194, 1197, 1197.1,
26 1198 and 2802.

27 48. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
28 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide

1 all legally required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA
2 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

27 54. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

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

10 56. Such a pattern, practice and uniform administration of corporate policy is
11 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA CLASS to full
12 restitution of all monies withheld, acquired or converted by DEFENDANT by means of the
13 unfair practices complained of herein, including interest thereon, attorney's fees and costs of
14 suit.

15
16 **SECOND CAUSE OF ACTION**

17 **For Failure To Pay Minimum Wages**

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

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

20 **and Against All Defendants)**

21 57. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
22 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
23 paragraphs of this Complaint.

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

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

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

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

8 62. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
9 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
10 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
11 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
12 CALIFORNIA LABOR SUB-CLASS.

13 63. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
14 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
15 a policy and practice that denies accurate compensation to PLAINTIFFS and the other members
16 of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

26 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
27 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
28 Members to work without paying them for all the time they were under DEFENDANT's

1 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
2 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
3 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

24 70. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
25 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
26 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
27 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
28 wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS

1 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
2 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
3 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
4 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
5 was willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA
6 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

7
8 **THIRD CAUSE OF ACTION**

9 **For Failure To Pay Overtime Compensation**

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

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

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

16 72. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
17 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
18 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
19 to pay these employees for all overtime worked, including, work performed in excess of eight
20 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
21 workweek.

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

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

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

1 including minimum wage and overtime compensation and interest thereon, together with the
2 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
3 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

4 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
5 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
6 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
7 including overtime work.

8 77. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
9 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
10 a policy and practice that failed to accurately record overtime worked by PLAINTIFFS and
11 other CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to
12 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime
13 worked, including, the overtime work performed in excess of eight (8) hours in a workday,
14 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

15 78. In committing these violations of the California Labor Code, DEFENDANT
16 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
17 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
18 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
19 of the California Labor Code, the Industrial Welfare Commission requirements and other
20 applicable laws and regulations.

21 79. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
22 the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
23 receive full compensation for overtime worked.

24 80. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
25 from the overtime requirements of the law. None of these exemptions are applicable to the
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not
28 subject to a valid collective bargaining agreement that would preclude the causes of action

1 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of
2 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
3 of non-negotiable, non-waiveable rights provided by the State of California.

4 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
5 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
6 overtime worked that they are entitled to, constituting a failure to pay all earned wages..

7 82. DEFENDANT failed to accurately pay the PLAINTIFFS and the other members
8 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
9 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
10 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR
11 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
12 failed to accurately record and pay as evidenced by DEFENDANT's business records and
13 witnessed by employees.

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

20 84. DEFENDANT knew or should have known that PLAINTIFFS and the other
21 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
22 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
23 to not pay employees for their labor as a matter of company policy, practice and procedure, and
24 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
25 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

26 85. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
28 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT

1 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and
2 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
3 disregard for their legal rights, or the consequences to them, and with the despicable intent of
4 depriving them of their property and legal rights, and otherwise causing them injury in order
5 to increase company profits at the expense of these employees.

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

17 **FOURTH CAUSE OF ACTION**

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

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

20 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

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

25 88. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
26 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
27 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
28

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

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

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

23
24 **FIFTH CAUSE OF ACTION**

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

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

27 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
28 **Defendants)**

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

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

93. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-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.

94. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS and Against All

Defendants)

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

96. 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,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

97. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the “Dir. Lab 1.0” “Dir. Lab 1.5.0 Dir. Lab 2.0” “Undist. Lab 1.0” “Undist. Lab 1.5” “Undist. Lab 2.0” and “FLD Train 1.0” items of pay, which are wage payments. In addition, whenever sick pay wages are underpaid to PLAINTIFFS and the

1 other CALIFORNIA CLASS Members, DEFENDANT failed to furnish wage statements
2 that accurately show and itemize applicable hourly rates for sick time taken. Aside, from the
3 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an
4 itemized wage statement that lists all the requirements under California Labor Code 226 *et*
5 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
6 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated
7 Cal. Lab. Code § 226.

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

20
21 **SEVENTH CAUSE OF ACTION**

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

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

24 **(By Plaintiff Chavez and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**

26 99. Plaintiff Chavez, and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
28 paragraphs of this Complaint.

1 100. Cal. Lab. Code § 200 provides that:

2 As used in this article:

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

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

10 101. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer
11 discharges an employee, the wages earned and unpaid at the time of discharge are due and
12 payable immediately."

13 102. Cal. Lab. Code § 202 provides, in relevant part, that:

14 If an employee not having a written contract for a definite period quits his or
15 her employment, his or her wages shall become due and payable not later than
16 72 hours thereafter, unless the employee has given 72 hours previous notice of
17 his or her intention to quit, in which case the employee is entitled to his or her
18 wages at the time of quitting. Notwithstanding any other provision of law, an
19 employee who quits without providing a 72-hour notice shall be entitled to
20 receive payment by mail if he or she so requests and designates a mailing
21 address. The date of the mailing shall constitute the date of payment for
22 purposes of the requirement to provide payment within 72 hours of the notice
23 of quitting.

24 103. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-
25 CLASS Members' employment contract.

26 104. Cal. Lab. Code § 203 provides:

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

105. The employment of Plaintiff Chavez and many CALIFORNIA LABOR SUB-
CLASS Members terminated and DEFENDANT has not tendered payment of all minimum
wages, meal and rest period premiums, sick wages, and overtime wages, to these employees,
as required by law.

106. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
members of the CALIFORNIA LABOR SUB-CLASS whose employment has, Plaintiff

1 Chavez demands up to thirty days of pay as penalty for not paying all wages due at time of
2 termination for all employees who terminated employment during the CALIFORNIA
3 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,
4 plus interest and statutory costs as allowed by law.

5 107. Cal. Lab. Code § 233 provides that an employer must permit an employee use
6 accrued sick leave in accordance with Cal. Lab. Code § 246.5 at the employee's then current
7 rate of entitlement. Cal. Lab. Code 246 provides that an employee is entitled to sick pay
8 wages for use of accrued sick leave. An employer must calculate paid sick time by using one
9 of two calculations: (I) "Paid sick time for nonexempt employees shall be calculated in the
10 same manner as the regular rate of pay for the workweek in which the employee uses paid
11 sick time, whether or not the employee actually works overtime in the that workweek" or
12 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
13 total wages, not including overtime premium pay, by the employee's total hours worked in
14 the full pay periods of the prior 90 days of employment." Cal. Lab. Code § 204 generally
15 provides that wages are due and payable twice during each calendar month, on days
16 designated in advance by the employer as the regular paydays. Consistent with Cal. Lab.
17 Code § 204, Cal. Lab. Code § 246 specifically requires that an employer shall provide
18 payment for sick leave taken by an employee no later than the payday for the next regular
19 payroll period after the sick leave was taken.

20 108. As a matter of policy and practice, Defendant pays PLAINTIFFS and the
21 CALIFORNIA LABOR SUB-CLASS members at the incorrect rate of pay. Defendant pays
22 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members at the base hourly
23 rate of pay, as opposed to the regular rate pay, which would take into account all-non
24 discretionary remuneration in addition to their base hourly wages, including for example
25 incentives or bonuses, or the rate resulting from dividing the employees' total wages, not
26 including overtime premium pay, by the employees' total hours worked in the full pay
27 periods of the prior 90 days of employment, as required by Cal. Lab. Code § 246. This
28 results in underpayments of sick pay wages to PLAINTIFFS and the CALIFORNIA

1 LABOR SUB-CLASS members.

2 109. Section 246 specifically requires that an employer shall provide payment for
3 sick leave taken by an employee no later than the payday for the next regular payroll period
4 after the sick leave was taken. Moreover, Section 204 generally provides that wages are due
5 and payable twice during each calendar month, on days designed in advance by the
6 employer as the regular paydays. Cal. Lab. Code § 201 provides that if an employer
7 discharges an employee, the wages earned and unpaid at the time of discharge are due and
8 payable immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive
9 all unpaid wages no later than 72 hours after an employee quits his or her employment,
10 unless the employee has given seventy-two (72) hours previous notice of his or her intention
11 to quit, in which case the employee is entitled to his or her wages at the time of quitting. Cal.
12 Lab. Code § 203 provides that if an employer willfully fails to pay wages owed in
13 accordance with Cal. Lab. Code §§ 201 and 202, then the wages of the employee shall
14 continue as a penalty from the due date, and at the same rate until paid, but the wages shall
15 not continue for more than thirty (30) days.

16 110. As alleged herein and as a matter of policy and practice, Defendant routinely
17 underpays sick pay wages to PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
18 members. Because Defendant does not pay or timely pay PLAINTIFFS and the
19 CALIFORNIA LABOR SUB-CLASS members all owing and underpaid sick pay wages,
20 Defendant violates Cal. Lab. Code §§ 201-204, 233, 246 and 248.5, and other Labor Code
21 provisions. Defendant willfully fails to timely pay PLAINTIFFS and the CALIFORNIA
22 LABOR SUB-CLASS members all their sick pay wages due and are therefore subject to
23 applicable penalties. On information and belief, Defendant was advised by skilled lawyers
24 and knew, or should have known, of the mandates of the Labor Code as it relates to
25 PLAINTIFFS' allegations, especially since the California Supreme Court has explained that
26 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is
27 entitled as part of his or her compensation, including money, room, board, clothing, vacation
28 pay, and sick pay." *Murphy v. Kenneth Cole Prods, Inc.*, 40 Cal. 4th 1094, 1103 (2007)

1 (emphasis added).

2 111. Such a pattern, practice, and uniform administration of corporate policy is
3 unlawful and entitles PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members
4 to underpaid sick pay, including interest thereon, applicable penalties, attorneys' fees, and
5 costs of suit.

6
7 **EIGHTH CAUSE OF ACTION**

8 **For Failure to Reimburse Business Expenses**

9 **[Cal. Lab. Code §§ 2800, 2802]**

10 **(By PLAINTIFFS and Against All Defendants)**

11 112. PLAINTIFFS hereby re-allege and incorporates by reference all paragraphs
12 above as though fully set forth herein.

13 113. Labor Code § 2800 states that "[a]n employer shall in all cases indemnify his
14 employee for losses caused by the employer's want of ordinary care."

15 114. Labor Code § 2802(a) states that "[a]n employer shall indemnify his or her
16 employee for all necessary expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties, or of his or her obedience to the directions
18 of the employer"

19 115. Labor Code § 2802(b) states that "[a]ll awards made by a court . . . for
20 reimbursement of necessary expenditures under this section shall carry interest at the same
21 rate as judgments in civil actions. Interest shall accrue from the date on which the employee
22 incurred the necessary expenditure or loss."

23 116. Labor Code § 2802(c) states that "[f]or purposes of this section, the term
24 "necessary expenditures or losses" shall include all reasonable costs, including, but not
25 limited to, attorney's fees incurred by the employee enforcing the rights granted by this
26 section."

27 117. During the relevant time period, PLAINTIFFS and the CALIFORNIA
28 LABOR SUB-CLASS members incurred necessary business-related costs that were not

1 fully reimbursed by Defendant, including, but not limited to tools required for work.

2 118. In violation of Labor Code §§ 2800 and 2802, DEFENDANT failed to
3 reimburse or indemnify PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
4 members for their expenses due to Defendant's knowing and intentional failure to reimburse
5 necessary business expenditures in connection with PLAINTIFFS' and the CALIFORNIA
6 LABOR SUB-CLASS members' work and job duties.

7 119. As a direct result, PLAINTIFFS and the CALIFORNIA LABOR
8 SUB-CLASS members have suffered and continue to suffer losses, and therefore seek
9 complete reimbursement and indemnification of necessary business expenditures or losses,
10 interest thereon at the required rate, and all reasonable costs in enforcing the rights under
11 Labor Code § 2802, including, but not limited to attorneys' fees.

12
13 **NINTH CAUSE OF ACTION**

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

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

16 **(By PLAINTIFFS and Against All Defendants)**

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

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

1 122. PLAINTIFFS, and such persons that may be added from time to time who
2 satisfy the requirements and exhaust the administrative procedures under the Private
3 Attorney General Act, bring this Representative Action on behalf of the State of California
4 with respect to themselves and all individuals who are or previously were employed by
5 DEFENDANT in California and who were classified as non exempt employees
6 (“AGGRIEVED EMPLOYEES”) during the time period of September 3, 2019 until a date
7 as determined by the Court (the "PAGA PERIOD").

8 123. On September 3, 2020, Plaintiff Lucchese gave written notice by electronic
9 mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail
10 to the employer of the specific provisions of this code alleged to have been violated as
11 required by Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this
12 reference herein. On February 25, 2021, Plaintiffs Lucchese and Chavez gave amended
13 written notice by electronic mail to the Agency and by certified mail to the employer, adding
14 Plaintiff Chavez as an additional aggrieved employee and additional allegations stemming
15 from Defendant’s failure to pay all wages, including wages for sick leave, in compliance
16 with Labor Code sections 203 and 204. *See Exhibit #2*, attached hereto and incorporated by
17 this reference herein. On October 14, 2021, Plaintiff Chang gave written notice by electronic
18 mail to the Agency and by certified mail to the employer of the specific provisions of this
19 code alleged to have been violated as required by Labor Code section 2699.3. *See Exhibit*
20 *#3*, attached hereto and incorporated by this reference herein. The statutory waiting period
21 for PLAINTIFFS to add these allegations to the Complaint has expired. As a result,
22 pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil action
23 under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to
24 all AGGRIEVED EMPLOYEES as herein defined.

25 124. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
27 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
28 properly record and provide legally required meal and rest periods, (c) failed to pay

1 minimum wages, and (d) failed to pay overtime wages, all in violation of the applicable
2 Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226, 226(a),
3 226.3, 226.7, 351, 510, 512, 558(a)(1)(2), 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198,
4 2800, and 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
5 (B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of
6 such conduct.¹ PLAINTIFFS hereby seeks recovery of civil penalties as prescribed by the
7 Labor Code Private Attorney General Act of 2004 as the representative of the State of
8 California for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED
9 EMPLOYEES.

10 125. All of the conduct and violations alleged herein occurred during the PAGA
11 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
12 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
13 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
14 2018 AJDAR 12157 (Certified for Publication 12/19/18).

15 16 **TENTH CAUSE OF ACTION**

17 **Retaliation**

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

19 **(By Plaintiff Lucchese Against All Defendants)**

20 126. Plaintiff Lucchese realleges and incorporates by reference, as though fully set
21 forth herein, the prior paragraphs of this Complaint.

22 127. At all relevant times, Labor Code section 1102.5 was in effect and was
23 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against
24 any employee, including Plaintiff Lucchese, for raising complaints of illegality and/or belief
25 that the employee may disclose illegality.

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

1 128. DEFENDANT failed to properly maintain standard safety measures at job
2 sites as well as on work Machinery. As such, Plaintiff Lucchese was placed in a constant
3 risk of harm while performing his job duties for DEFENDANT. In March of 2020, Plaintiff
4 Lucchese informed DEFENDANT about such safety issues, but to no avail. In or around
5 March of 2020, and continuing through out the rest of Plaintiff Lucchese's employment,
6 Plaintiff Lucchese engaged in protected activity by complaining to DEFENDANT of
7 DEFENDANT's failure to maintain compliant safety standards, including, but not limited
8 to, DEFENDANT's failure to maintain the safety of work machines on DEFENDANT's job
9 sites, and DEFENDANT's insistence on jeopardizing public safety and worker safety in
10 order to accommodate the best interests of DEFENDANT itself. As a direct consequence of
11 Plaintiff Lucchese's complaints to DEFENDANT, DEFENDANT retaliated against Plaintiff
12 Lucchese by removing him from the job site and demoting him to a helper position from the
13 mechanic position which resulted in lost wages. Plaintiff Lucchese raised complaints of
14 illegality while he worked for DEFENDANT and was believed to be willing to raise
15 complaints, and DEFENDANT retaliated against him by taking adverse employment
16 actions, including removal form the job site at which he worked and job demotion, against
17 him.

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

22 130. As a result of DEFENDANT'S adverse employment actions against Plaintiff
23 Lucchese, Plaintiff Lucchese has suffered general and special damages in sums according to
24 proof.

25 131. DEFENDANT'S misconduct was committed intentionally, in a malicious,
26 oppressive manner, and fraudulent manner entitling Plaintiff Lucchese to punitive damages
27 against defendants.
28

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS 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 PLAINTIFFS 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 Eight 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 PLAINTIFFS 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) 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;

- 1 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order; and,
- 3 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
4 1197; and,
- 5 F) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
6 CLASS as a penalty from the due date thereof at the same rate until paid or until
7 an action therefore is commenced, in accordance with Cal. Lab. Code § 203
- 8 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 9 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
10 General Act of 2004.
- 11 4. On behalf of Plaintiff Lucchese for the Tenth Cause of Action:
- 12 A) For all special damages which were sustained as a result of DEFENDANT's
13 conduct, including, but not limited to, back pay, front pay, lost compensation and
14 job benefits that Plaintiff Lucchese would have received but for the retaliatory
15 practices of DEFENDANT; and,
- 16 B) For all exemplary damages, according to proof, which were sustained as a result
17 of DEFENDANT's conduct.
- 18 5. 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
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1 Dated: May 10, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2
3 By: /s/Norman B. Blumenthal
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Telephone: (949) 379-6250
Facsimile: (949) 379-6251

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

September 3, 2020

CA2192

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Kone Inc.

Online Filing

Certified Mail #70192970000014863449

CSC - Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Kone Inc. in California and classified as non-exempt employees during the time period of September 3, 2019 until a date as determined by the Court. Our offices represent Plaintiff Matthew Lucchese (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Kone Inc. (“Defendant”). Plaintiff has been employed by Defendant in California as a non-exempt employee as a Mechanic since June of 2016 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further,

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

EXHIBIT 2

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

Web Site: www.bamlawca.com

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Phone: (858) 551-1223

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WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

February 25, 2021
CA2192

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Kone Inc.

Online Filing

Certified Mail #70203160000068263138

CSC- Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Amended Notice for LWDA Case No. LWDA-CM-804988-20

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 248.5, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Matthew Lucchese and Julio Chavez (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against Defendant Kone Inc. (“Defendant”). “Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Kone Inc. in California and classified as non-exempt employees during the time period of September 3, 2019 until a date as determined by the Court.

Plaintiff Lucchese originally sent a PAGA Notice on September 3, 2020 and gave notice to the LWDA and Defendant to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to amend Plaintiff Lucchese’s original PAGA Notice to provide an amended PAGA notice that will include an additional aggrieved employee, Plaintiff Julio Chavez, and additional allegations stemming from Defendant’s failure to pay all wages, including wages for sick leave taken, in compliance with Labor Code sections 203 and 204.

Defendant unlawfully failed to comply with the Health Workplace Healthy Family Act of 2014, Labor Code section 246 *et seq.*, which mandates that Defendant pay Plaintiffs

and the other Aggrieved Employees sick leave taken at their regular rate of pay. Defendant however paid Plaintiffs and the other Aggrieved Employees sick leave at a rate lower than their regular rate of pay in violation of Labor Code sections 203 and 204 as Defendant failed to provide payment of the underpayment at the time of the employee's termination of employment.

Plaintiff Chavez was employed by Defendant in California as a non-exempt employee from April of 2019 to November of 2020 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control. Defendant, however, unlawfully failed to record and pay Plaintiff Chavez and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff Chavez and Aggrieved Employees to report for work, but "furnished less than half said employee's usual or scheduled day's work," Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff Chavez and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff Chavez and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff Chavez and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff Chavez and other Aggrieved Employees with their wages. Plaintiff Chavez further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff Chavez contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff Chavez began and ended each shift and meal period. Plaintiff Chavez and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff Chavez and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 248.5, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the First Amended Complaint by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint

into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

EXHIBIT 3



AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: 949.379.6250
Facsimile: 949.379.6251
www.aegislawfirm.com

October 14, 2021

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Agent for Service of Process for Kone, Inc.:
CSC – Lawyers Incorporating Service (C1592199)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: David Chang v. Kone, Inc.

Dear Labor and Workforce Development Agency; Kone, Inc.:

Please allow this correspondence to serve as written notice required by California Labor Code § 2699.3(a)(1) of the specific provisions of the Labor Code allegedly violated by Kone, Inc. (“Kone”) and the facts and theories in support of said allegations. This firm represents David Chang (“Claimant”); we hereby notify you that Claimant intends to seek penalties against Kone under the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.*, on Claimant’s own behalf and all other aggrieved employees.

Specific Provisions of the Labor Code Allegedly Violated by Kone

The specific provisions of the Labor Code allegedly violated by Kone and the provisions under which Claimant submits this correspondence include the following: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

Facts and Theories Supporting the Allegations Against Kone

Claimant and other aggrieved employees worked for Kone in California as non-exempt employees. Claimant was employed by Kone in California within the past year.

During the past year, Kone failed to provide 30-minute uninterrupted meal periods within the appropriate time intervals to Claimant and other aggrieved employees as required by Labor Code section 512 and section 11 of the applicable Wage Order. Claimant and other aggrieved employees frequently worked shifts over five hours and did not receive lawful meal periods because they were interrupted during their meal periods, were required to work through their meal periods, were contacted by their managers during their meal periods, were pressured to work through meal periods, were not given second meal periods in shifts over 10 hours, and/or were not

scheduled to be relieved by other employees at the appropriate intervals to receive all lawful meal periods. As a result, their meal periods were missed, late, short, and/or interrupted.

When Claimant and other aggrieved employees missed meal periods or if the meal periods were late, short, and/or interrupted, Kone violated Labor Code sections 226.7 and 512, as well as section 11 of the applicable Wage Order, by failing to pay an additional hour of pay at the regular rate of pay to Claimant and other aggrieved employees for every day in which they suffered a meal period violation. Even if Kone paid some meal period premiums, it failed to include bonuses or other incentive pay in the meal period premium rate, thereby underpaying those premiums.

Kone failed to authorize or permit paid 10-minute rest periods for every four hours or major fraction thereof worked because Claimant and other aggrieved employees were required to work through their rest periods, were required to remain on call during rest periods, were interrupted during rest periods, were discouraged from taking their rest periods, were not given third rest periods in shifts over 10 hours, and/or were not scheduled to be relieved by other employees at the appropriate intervals to receive all rest periods.

When Claimant and other aggrieved employees did not receive rest periods, Kone violated Labor Code section 226.7 and section 12 of the applicable Wage Order by failing to pay an additional hour of pay at the regular rate of pay to Claimant and other aggrieved employees. Even if Kone paid some rest period premiums, it failed to include bonuses or other incentive pay in the rest period premium rate, thereby underpaying those premiums.

Kone failed to pay Claimant and other aggrieved employees at least the legal minimum wage and overtime wage for all hours worked (in violation of Labor Code sections 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198) due to Kone's policy and practice of requiring Claimant and aggrieved employees to work off-the-clock, including before shifts, after shifts, and during meal periods. For example, Kone employees would contact Claimant and other aggrieved employees during meal periods, and Kone required Claimant and other aggrieved employees to clock out and continue working to complete all of their assigned tasks. Additionally, Kone rounded employee time punches to the nearest quarter hour, resulting in underpayment to employees over time and time spent working that was not compensated. To the extent such work performed off-the-clock entitled employees to pay at the legal minimum wage rate, regular rate, or at the overtime rate of pay, Kone failed to pay Claimant and other aggrieved all minimum, regular, and overtime wages for these hours. Furthermore, Kone paid bonuses to Claimant and other aggrieved employees such that the employees expected the bonuses each year but Kone failed to include those bonuses in the overtime pay earned during the year, there by underpaying Claimant and other aggrieved employees.

Claimant and other aggrieved employees incurred necessary business-related expenses as a direct consequence of the discharge of their job duties for the benefit of Kone. For example, Claimant and aggrieved employees incurred expenses associated with buying their own equipment required for work, among other expenses. As such, Kone violated Labor Code §§ 2800 and 2802 by failing to reimburse Claimant and other aggrieved employees for such expenses.

As a result of, and in addition to, these actions, Kone violated Labor Code sections 226, and 226.3 by failing to provide itemized wage statements that accurately reported the following:

(1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate 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; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Specifically, the wage statements failed to list the correct hours, rates, and pay due to the above unpaid wage violations; the wage statements list overtime premium pay and overtime straight pay separately, making it confusing to determine the total hours worked and the hours worked at each rate of pay; among other violations.

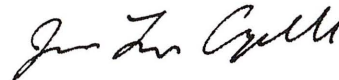
Kone violated Labor Code sections 1174 and 1174.5 by failing to maintain accurate and complete records showing the hours worked daily by the aggrieved employees and the wages paid to aggrieved employees (due to the same underpayment of wages referenced above).

Furthermore, Kone violated the Labor Code by failing to properly pay all these wages owed throughout aggrieved employees' employment and following the end of these workers' employment with Kone due to the above violations (in violation of Labor Code sections 201, 202, 203, 204).

Based on these violations, Claimant seeks attorneys' fees, interest, and penalties under the Labor Code. Enclosed and incorporated by reference is the class action complaint Claimant intends to file on behalf of himself and all other aggrieved employees against Kone. Claimant intends to amend the complaint to include a cause of action pursuant to Labor Code §§ 2698, *et seq.*, after the minimum required review period elapses and will file a conformed copy of the complaint after it has been filed with the court.

Thank you for your assistance on this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,
AEGIS LAW FIRM, PC



Jessica L. Campbell

Enclosure: Class Action Complaint

1 **BLUMENTHAL NORDREHAUG**
2 **BHOWMIK DE BLOUW LLP**
2255 Calle Clara, La Jolla, CA 92037
3 T: (858)551-1223; F: (858) 551-1232

Lucchese v. Kone, Inc.
San Francisco County Superior Court
Case No. CGC-20-588225

4 **PROOF OF SERVICE**

5 I, am employed in the County of San Diego, State of California. I am over the age of
6 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla,
California, 92037.

7 On May 17, 2022, I served the document(s) described as:

8 **Plaintiffs' Second Amended Class Action Complaint**

9 on the interested parties:

10 X (BY ELECTRONIC SERVICE): Pursuant to CCP §1010.6(e), I transmitted a PDF
11 version of the document(s) via electronic mail (e-mail) to counsel for Defendant at the
following confirmed e-mail address(es):

12 Edwin M. Boniske, Esq.
13 Kyle W. Nageotte, Esq.
14 Jamie M. Ritterbeck, Esq.
HIGGS FLETCHER & MACK LLP
401 West "A" Street, Suite 2600
15 San Diego, CA 9210-7913

Attorneys for Defendant KONE, INC.

Emails: boniske@higgslaw.com
nageottek@higgslaw.com
ritterbeckj@higgslaw.com

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17
18 I declare under penalty of perjury under the laws of the State of California and the United
19 States of America that the above is true and correct.

20 Executed on May 17, 2022, at San Diego, California.

21 

22 Karla Horne