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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAR 01 2021

L. VILLANUEVA

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF RIVERSIDE**

14 DANIEL NAVARRO, ANDREW
15 ORTEGA, DAVITSHEA SINGLETARY
16 KAREEM TERRY, JOHN NELSON,
17 RICHARD VASQUEZ, JOSEPH
18 CHAROGOFF, MARTIN FELIX, SAM
19 BLAGOVICH, PEDRO VARGAS, JR.
20 and LUIS LOMELI, individuals, on behalf
21 of themselves and on behalf of all persons
22 similarly situated,

23 Plaintiffs,

24 vs.

25 SAN GORGONIO MEMORIAL
26 HOSPITAL, a California Corporation; and
27 Does 1 through 50, Inclusive,

28 Defendants.

Case No. **CVRI 2101033**

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *ET SEQ.*; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiffs Daniel Navarro, Andrew Ortega, Davitshea Singletary, Kareem Terry, John
2 Nelson, Richard Vasquez, Joseph Charogoff, Martin Felix, Sam Blagovich, Pedro Vargas, Jr.
3 and Luis Lomeli, (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly
4 situated current and former employees, allege on information and belief, except for their own
5 acts and knowledge which are based on personal knowledge, the following:

6
7 **THE PARTIES**

8 1. Defendant San Gorgonio Memorial Hospital (“DEFENDANT”) is California
9 Corporation that at all relevant times mentioned herein conducted and continues to conduct
10 substantial and regular business throughout California.

11 2. DEFENDANT is a hospital. Founded in 1951, DEFENDANT tends to those in
12 need of medical attention in Riverside county.

13 3. Plaintiff Navarro has been employed by DEFENDANT as a non-exempt employee
14 entitled to overtime pay and meal and rest periods since August of 2019. PLAINTIFF has been
15 at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee
16 paid in whole or in part on an hourly basis and receives additional compensation from
17 DEFENDANT in the form of non-discretionary incentive wages.

18 4. Plaintiff Ortega has been employed by DEFENDANT in California as a non-
19 exempt employee entitled to overtime pay and meal and rest periods since 2015. PLAINTIFF
20 has been at all times relevant mentioned herein classified by DEFENDANT as a non-exempt
21 employee paid in whole or in part on an hourly basis and receives additional compensation from
22 DEFENDANT in the form of non-discretionary incentive wages.

23 5. Plaintiff Singletary was employed by DEFENDANT in California as a non-
24 exempt employee entitled to overtime pay and meal and rest periods from July of 2020 until
25 September of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
26 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
27 received additional compensation from DEFENDANT in the form of non-discretionary
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1 incentive wages.

2 6. Plaintiff Terry was employed by DEFENDANT in California as a non-exempt
3 employee entitled to overtime pay and meal and rest periods from March of 2020 until October
4 of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
5 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
6 compensation from DEFENDANT in the form of non-discretionary incentive wages.

7 7. Plaintiff Nelson has been employed by DEFENDANT in California as a non-
8 exempt employee entitled to overtime pay and meal and rest periods since 2013. PLAINTIFF
9 has been at all times relevant mentioned herein classified by DEFENDANT as a non-exempt
10 employee paid in whole or in part on an hourly basis and receives additional compensation from
11 DEFENDANT in the form of non-discretionary incentive wages.

12 8. Plaintiff Vasquez was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from December of 2017 until
14 October of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
15 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
16 received additional compensation from DEFENDANT in the form of non-discretionary
17 incentive wages.

18 9. Plaintiff Charogoff was employed by DEFENDANT in California as a non-
19 exempt employee entitled to overtime pay and meal and rest periods from September of 2017
20 until December of 2019. PLAINTIFF was at all times relevant mentioned herein classified by
21 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
22 received additional compensation from DEFENDANT in the form of non-discretionary
23 incentive wages.

24 10. Plaintiff Felix was employed by DEFENDANT in California as a non-exempt
25 employee entitled to overtime pay and meal and rest periods from October of 2015 until
26 November of 2019. PLAINTIFF was at all times relevant mentioned herein classified by
27 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
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1 received additional compensation from DEFENDANT in the form of non-discretionary
2 incentive wages.

3 11. Plaintiff Blagovich was employed by DEFENDANT in California as a non-
4 exempt employee entitled to overtime pay and meal and rest periods from October of 2012 until
5 October of 2017. PLAINTIFF was at all times relevant mentioned herein classified by
6 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
7 received additional compensation from DEFENDANT in the form of non-discretionary
8 incentive wages.

9 12. Plaintiff Vargas Jr. was employed by DEFENDANT in California as a non-
10 exempt employee entitled to overtime pay and meal and rest periods from January of 2018 until
11 October of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
12 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
13 received additional compensation from DEFENDANT in the form of non-discretionary
14 incentive wages.

15 13. Plaintiff Lomeli was employed by DEFENDANT in California as a non-exempt
16 employee entitled to overtime pay and meal and rest periods from December of 2019 until May
17 of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
18 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
19 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

THE CONDUCT

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

19. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments. Indeed there were days where PLAINTIFFS did not even receive a partial lunch. Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFFS and CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a condition of employment,

1 required these employees to wait in line and submit to mandatory temperature checks for
2 COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the
3 workday. Further, PLAINTIFFS and other members of the CALIFORNIA CLASS from time
4 to time were not paid wages for all time worked, including overtime wages, such that in the
5 aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice
6 of unevenly rounding time worked by its employees. As a result, PLAINTIFFS and other
7 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
8 working without their time being accurately recorded and without compensation at the
9 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
10 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
11 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

12 20. State and federal law provides that employees must be paid overtime at one-and-
13 one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS
14 Members were compensated at an hourly rate plus incentive pay that was tied to specific
15 elements of an employee's performance.

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

9 22. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
11 intentionally and knowingly failed to compensate PLAINTIFFS and the other members of the
12 CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This policy and
13 practice of DEFENDANT is intended to purposefully avoid the payment of the correct overtime
14 compensation as required by California law which allowed DEFENDANT to illegally profit and
15 gain an unfair advantage over competitors who complied with the law. To the extent equitable
16 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the
17 CALIFORNIA CLASS PERIOD should be adjusted accordingly.

18 23. As a result of their rigorous work schedules, PLAINTIFFS and other
19 CALIFORNIA CLASS Members were from time to time unable to take off duty meal breaks
20 and were not fully relieved of duty for meal periods. PLAINTIFFS and other CALIFORNIA
21 CLASS Members were from time to time required to perform work as ordered by
22 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
23 break. Additionally, DEFENDANT required PLAINTIFF to wait in line and submit to
24 mandatory temperature checks for COVID-19 screening prior to clocking into DEFENDANT's
25 timekeeping system for the workday. As a result, PLAINTIFF forfeited minimum wage,
26 overtime wage compensation, and off-duty meal breaks by working without his time being
27 correctly recorded and without compensation at the applicable rates. Further, DEFENDANT
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1 failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty
2 meal period from time to time in which these employees were required by DEFENDANT to
3 work ten (10) hours of work. PLAINTIFFS and the other CALIFORNIA CLASS Members
4 therefore forfeited meal breaks without additional compensation and in accordance with
5 DEFENDANT's corporate policy and practice.

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

1 25. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
2 employees with an accurate itemized wage statement in writing showing, among other things,
3 gross wages earned and all applicable hourly rates in effect during the pay period and the
4 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
5 failed to provide to PLAINTIFFS and the CALIFORNIA CLASS wage statements that identify
6 the correct gross and net wages earned, the applicable number of hours worked and rates of pay.
7 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
8 PLAINTIFFS and other CALIFORNIA CLASS members an itemized wage statement that lists
9 all the requirements under California Labor Code 226 *et seq.*

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

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

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

15 29. Specifically as to PLAINTIFFS’ pay, DEFENDANT provided compensation to
16 them in the form of two components. One component of PLAINTIFFS’ compensation was a
17 base hourly wage. The second component of PLAINTIFFS’ compensation were non-
18 discretionary incentive wages. DEFENDANT paid the incentive wages, so long as
19 PLAINTIFFS met certain predefined performance requirements. PLAINTIFFS met
20 DEFENDANT’s predefined eligibility performance requirements in various pay periods
21 throughout their employment with DEFENDANT and DEFENDANT paid PLAINTIFFS the
22 non-discretionary incentive wages. During these pay periods in which PLAINTIFFS were paid
23 the non-discretionary incentive wages by DEFENDANT, PLAINTIFFS also worked overtime
24 for DEFENDANT, but DEFENDANT never included the incentive compensation in
25 PLAINTIFFS’ regular rate of pay for the purposes of calculating what should have been
26 PLAINTIFFS’ accurate overtime rate and thereby underpaid PLAINTIFFS for overtime worked
27 throughout their employment with DEFENDANT. The incentive compensation paid by
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1 DEFENDANT constituted wages within the meaning of the California Labor Code and thereby
2 should have been part of PLAINTIFFS' "regular rate of pay." PLAINTIFFS were also from
3 time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for
4 their meal periods. PLAINTIFFS were required to perform work as ordered by DEFENDANT
5 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
6 DEFENDANT failed to provide PLAINTIFFS with a second off-duty meal period from time
7 to time in which they were required by DEFENDANT to work ten (10) hours of work.
8 PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in
9 accordance with DEFENDANT's corporate policy and practice. DEFENDANT also provided
10 PLAINTIFFS with a pay stub that failed to accurately display PLAINTIFFS' correct net and
11 gross wages earned and all hourly rates for certain pay periods in violation of Cal. Lab. Code
12 § 226(a). To date, DEFENDANT has not fully paid PLAINTIFFS the wage compensation still
13 owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in
14 controversy for PLAINTIFFS individually do not exceed the sum or value of \$75,000.

15 16 **JURISDICTION AND VENUE**

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

21 31. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
23 maintained offices and facilities in this County and/or conducts substantial business in this
24 County, and (ii) committed the wrongful conduct herein alleged in this County against members
25 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

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THE CALIFORNIA CLASS

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

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

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

35. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare

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

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

18 37. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
19 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
20 employee for all overtime worked at the applicable rate, as required by California Labor Code
21 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
22 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
23 as to include all earnings in the overtime compensation calculation as required by California
24 Labor Code §§ 510, *et seq.*

25 38. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 39. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
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1 law by:

- 2 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
3 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
4 place company policies, practices and procedures that failed to pay all
5 minimum and overtime wages due the CALIFORNIA CLASS for all time
6 worked, and failed to accurately record the applicable rates of all overtime
7 worked by the CALIFORNIA CLASS;
- 8 (b) Committing an act of unfair competition in violation of the California
9 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
10 unlawfully, unfairly, and/or deceptively having in place a company policy,
11 practice and procedure that failed to correctly calculate overtime
12 compensation due to PLAINTIFFS and the members of the
13 CALIFORNIA CLASS;
- 14 (c) Committing an act of unfair competition in violation of the California
15 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
16 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
17 *seq.*, by failing to pay the correct federal overtime wages to the
18 PLAINTIFFS and the members of the CALIFORNIA CLASS as legally
19 required by the FLSA, and retaining the unpaid federal overtime to the
20 benefit of DEFENDANT.;
- 21 (d) Committing an act of unfair competition in violation of the California
22 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
23 failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and
24 the CALIFORNIA CLASS members; and,
- 25 (e) Committing an act of unfair competition in violation of the California
26 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
27 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
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1 the CALIFORNIA CLASS members with necessary expenses incurred in
2 the discharge of their job duties.

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

- 5 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
6 that the joinder of all such persons is impracticable and the disposition of
7 their claims as a class will benefit the parties and the Court;
- 8 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
9 that are raised in this Complaint are common to the CALIFORNIA
10 CLASS will apply to every member of the CALIFORNIA CLASS;
- 11 (c) The claims of the representative PLAINTIFFS are typical of the claims of
12 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
13 other members of the CALIFORNIA CLASS, were subjected to the
14 employment practices of DEFENDANT and was a non-exempt employee
15 paid on an hourly basis and paid additional non-discretionary incentive
16 wages who was subjected to the DEFENDANT's practice and policy
17 which fails to pay the correct rate of overtime wages due to the
18 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
19 CLASS and thereby underpays overtime compensation to the
20 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
21 result of DEFENDANT's employment practices. PLAINTIFFS and the
22 members of the CALIFORNIA CLASS were and are similarly or
23 identically harmed by the same unlawful, deceptive and unfair
24 misconduct engaged in by DEFENDANT; and,
- 25 (d) The representative PLAINTIFFS will fairly and adequately represent and
26 protect the interest of the CALIFORNIA CLASS, and has retained
27 counsel who are competent and experienced in Class Action litigation.

1 There are no material conflicts between the claims of the representative
2 PLAINTIFFS and the members of the CALIFORNIA CLASS that would
3 make class certification inappropriate. Counsel for the CALIFORNIA
4 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
5 Members.

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

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

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

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

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

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

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

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

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

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

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

- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

24 43. DEFENDANT maintains records from which the Court can ascertain and identify
25 by job title each of DEFENDANT's employees who as have been intentionally subjected to
26 DEFENDANT's conduct as herein alleged. PLAINTIFFS will seek leave to amend the
27 Complaint to include any additional job titles of similarly situated employees when they have
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1 been identified.

2
3 **THE CALIFORNIA LABOR SUB-CLASS**

4 44. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
5 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
6 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
7 SUB-CLASS”) at any time during the period beginning on the date three (3) years prior to the
8 filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA
9 LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in
10 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
11 five million dollars (\$5,000,000.00).

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

24 46. DEFENDANT maintains records from which the Court can ascertain and identify
25 by name and job title, each of DEFENDANT’s employees who have been intentionally
26 subjected to DEFENDANT’s conduct as herein alleged. PLAINTIFFS will seek leave to amend
27 the complaint to include any additional job titles of similarly situated employees when they have
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1 been identified.

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

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

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

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

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

- 10 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
11 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
12 CLASS the correct overtime pay for which DEFENDANT is liable
13 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 14 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
15 accurately pay PLAINTIFFS and the members of the CALIFORNIA
16 LABOR SUB-CLASS the correct minimum wage pay for which
17 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 18 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
19 PLAINTIFFS and the other members of the CALIFORNIA LABOR
20 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
21 minute meal breaks and the legally required rest breaks; and,
- 22 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
23 the members of the CALIFORNIA LABOR SUB-CLASS with an
24 accurate itemized statement in writing showing all accurate and applicable
25 overtime rates in effect during the pay period and the corresponding
26 amount of time worked at each overtime rate by the employee;
- 27 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS

1 and the CALIFORNIA LABOR SUB-CLASS members with necessary
2 expenses incurred in the discharge of their job duties; and,

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

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

- 11 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
12 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
13 Members is impracticable and the disposition of their claims as a class
14 will benefit the parties and the Court;
- 15 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
16 that are raised in this Complaint are common to the CALIFORNIA
17 LABOR SUB-CLASS and will apply to every member of the
18 CALIFORNIA LABOR SUB-CLASS;
- 19 (c) The claims of the representative PLAINTIFFS are typical of the claims of
20 each member of the CALIFORNIA LABOR SUB-CLASS.
21 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
22 SUB-CLASS, were non-exempt employees paid on an hourly basis and
23 paid additional non-discretionary incentive wages who was subjected to
24 the DEFENDANT's practice and policy which failed to pay the correct
25 rate of overtime wages due to the CALIFORNIA LABOR SUB-CLASS
26 for all overtime worked. PLAINTIFFS sustained economic injury as a
27 result of DEFENDANT's employment practices. PLAINTIFFS and the
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1 members of the CALIFORNIA LABOR SUB-CLASS were and are
2 similarly or identically harmed by the same unlawful, deceptive and unfair
3 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

19 61. By the conduct alleged herein, DEFENDANT's practices were also unfair and
20 deceptive in that DEFENDANT's policies, practices and procedures failed to provide
21 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

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

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

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

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

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

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

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

3 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
4 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
5 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
6 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFFS
7 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
8 correct amount of overtime worked and correct applicable overtime rate for the amount of
9 overtime they worked. As set forth herein, DEFENDANT's policy and practice was to
10 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
11 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
12 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
13 all overtime worked.

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

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

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

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

5 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

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

20 (1) gross wages earned,

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

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

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

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

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

8
9 **SEVENTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 2802]**

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

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

17 112. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

21 113. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
22 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
23 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
24 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR
25 SUB-CLASS members for expenses which included, but were not limited to, costs related to
26 using their personal cellular phones on behalf of and for the benefit of DEFENDANT.
27 Specifically, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
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1 required by DEFENDANT to use their personal cellular phones in order to perform work
2 related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and
3 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
4 personal cellular phones for DEFENDANT within the course and scope of their employment
5 for DEFENDANT. These expenses were necessary to complete their principal job duties.
6 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
7 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and
8 the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
9 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these
10 expenses as an employer is required to do under the laws and regulations of California.

11 114. PLAINTIFFS therefore demand reimbursement for expenditures or losses
12 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
13 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
14 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

15 **EIGHTH CAUSE OF ACTION**

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

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

18 **(By Plaintiffs Singletary, Terry, Vasquez, Charogoff, Felix, Blagovich, Vargas Jr.,**
19 **Lomeli and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

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

23 116. Cal. Lab. Code § 200 provides that:

24 As used in this article:

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

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

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

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

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

119. There was no definite term in Plaintiffs Singletary, Terry, Vasquez, Charogoff, Felix, Blagovich, Vargas Jr., Lomelis', or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

120. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in 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.

121. The employment of Plaintiffs Singletary, Terry, Vasquez, Charogoff, Felix, Blagovich, Vargas Jr., and Lomeli and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages, to these employees who actually worked overtime, as required by law.

122. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has ended, Plaintiffs Singletary, Terry, Vasquez, Charogoff, Felix, Blagovich, Vargas Jr., and Lomeli demand up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

1 **NINTH CAUSE OF ACTION**

2 **Retaliation**

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

4 **(By Plaintiff Navarro Against All Defendants)**

5 123. Plaintiff Navarro realleges and incorporates by reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

7 124. At all relevant times, Labor Code section 1102.5 was in effect and was binding
8 on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee,
9 including Plaintiff Navarro, for raising complaints of illegality and/or belief that the employee
10 may disclose illegality.

11 125. DEFENDANT failed to properly maintain standard safety measures at the hospital
12 during the Covid-19 pandemic. As such, Plaintiff Navarro was placed in a constant risk of harm
13 while performing his job duties for DEFENDANT. In March of 2020, Plaintiff Navarro
14 informed DEFENDANT about such safety issues, but to no avail. In or around March of 2020,
15 and continuing through much of PLAINTIFF's employment, Plaintiff Navarro's engaged in
16 protected activity by complaining to DEFENDANT of DEFENDANT's failure to maintain
17 compliant safety standards, including, but not limited to, DEFENDANT's failure to provide
18 personal protective equipment (PPE) during the COVID-19 pandemic at DEFENDANT's
19 hospital, and DEFENDANT's insistence on jeopardizing public safety and worker safety in
20 order to accommodate the best interests of DEFENDANT itself. As a direct consequence of
21 Plaintiff Navarro's complaints to DEFENDANT, DEFENDANT retaliated against Plaintiff
22 Navarro by bypassing him and neglecting to even interview him, despite his extensive
23 qualifications, for the lead security position. This fact, along with the constant bullying and
24 harassment at DEFENDANT's work place, has resulted in resulted in lost time, lost
25 opportunities and therefore, lost wages. Plaintiff Navarro has raised complaints of illegality
26 while working for DEFENDANT and was believed to be willing to raise complaints, and
27 DEFENDANT retaliated against him by taking adverse employment actions, including
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1 bypassing him for a promotion, bullying and harassment.

2 126. As a proximate result of DEFENDANT'S willful, knowing, and intentional
3 violation(s) of Labor Code section 1102.5, Plaintiff Navarro has suffered and continues to
4 suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his
5 damage in a sum according to proof.

6 127. As a result of DEFENDANT'S adverse employment actions against Plaintiff
7 Navarro, Plaintiff Navarro has suffered general and special damages in sums according to
8 proof.

9 128. DEFENDANT'S misconduct was committed intentionally, in a malicious,
10 oppressive manner, and fraudulent manner entitling Plaintiff Navarro to punitive damages
11 against defendants.

12 **TENTH CAUSE OF ACTION**

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

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

15 **(By Plaintiffs Navarro, Ortega, Singletary and Terry and Against All Defendants)**

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

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

1 131. Plaintiffs Navarro, Ortega, Singletary and Terry, and such persons that may be
2 added from time to time who satisfy the requirements and exhaust the administrative procedures
3 under the Private Attorney General Act, bring this Representative Action on behalf of the State
4 of California with respect to themselves and all individuals who worked for DEFENDANT in
5 California and were classified as non-exempt employees (the "AGGRIEVED EMPLOYEES")
6 during the time period of October 26, 2019 until a date as determined by the Court (the "PAGA
7 PERIOD").

8 132. On October 26, 2020, Plaintiffs Navarro, Ortega, Singletary and Terry gave
9 written notice by electronic mail to the Labor and Workforce Development Agency (the
10 "Agency") and by certified mail to the employer of the specific provisions of this code alleged
11 to have been violated as required by Labor Code § 2699.3. The statutory waiting period for
12 Plaintiffs Navarro, Ortega, Singletary and Terry to add these allegations to the Complaint has
13 expired. As a result, pursuant to Section 2699.3, Plaintiffs Navarro, Ortega, Singletary and
14 Terry may now commence a representative civil action under PAGA pursuant to Section 2699
15 as the proxies of the State of California with respect to all AGGRIEVED EMPLOYEES as
16 herein defined.

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

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

12
13 **PRAYER FOR RELIEF**

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

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

26
27 ¹Plaintiffs Navarro, Ortega, Singletary and Terry specifically exclude and/or do not allege
28 any claims under California Labor Code §558(a)(3).

1 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- 3 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
4 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
5 action pursuant to Cal. Code of Civ. Proc. § 382;
- 6 B) Compensatory damages, according to proof at trial, including compensatory
7 damages for overtime compensation due PLAINTIFFS and the other members
8 of the CALIFORNIA LABOR SUB-CLASS, during the applicable
9 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
10 statutory rate;
- 11 C) Meal and rest period compensation pursuant to California Labor Code Section
12 226.7 and the applicable IWC Wage Order;
- 13 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
14 in which a violation occurs and one hundred dollars (\$100) per each member of
15 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 an award of costs for violation of Cal. Lab. Code § 226;
- 18 E) The amount of the expenses PLAINTIFFS and each member of the
19 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
20 plus interest, and costs of suit;
- 21 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
22 1197;
- 23 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
24 CLASS as a penalty from the due date thereof at the same rate until paid or until
25 an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,
- 26 H) The greater of all actual damages or one hundred dollars (\$100) for the initial pay
27 period in which a violation occurs and two hundred dollars (\$200) per each
28

1 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
2 subsequent pay period, for violation of Cal. Lab. Code § 204(a), in accordance
3 with Cal. Lab. Code § 210.

4 3. On behalf of Plaintiff Navarro for the Ninth Cause of Action:

- 5 A) For all special damages which were sustained as a result of DEFENDANT's
6 conduct, including, but not limited to, back pay, front pay, lost compensation and
7 job benefits that PLAINTIFF would have received but for the retaliatory practices
8 of DEFENDANT; and,
9 B) For all exemplary damages, according to proof, which were sustained as a result
10 of DEFENDANT's conduct.

11 4. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES:

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

15 5. On all claims:

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

21
22 Dated: February 25, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

23
24 By. 

25 Norman B. Blumenthal
26 Attorneys for Plaintiffs
27
28

DEMAND FOR A JURY TRIAL

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

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

By: 
Norman B. Blumenthal
Attorneys for Plaintiffs