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County of San Diego

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Clerk of the Superior Court
By Bernabe Montijo, Deputy Clerk

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

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 BRADLEY LUTAT, an individual, on behalf
15 of himself and on behalf of all persons
16 similarly situated,

17 Plaintiff,

18 vs.

19 BARRY'S BOOTCAMP, LLC, a California
20 Limited Liability Company; BARRY'S
21 BOOTCAMP SAN DIEGO LLC, a
22 California Limited Liability Company;
23 BARRY'S BAY AREA, LLC, a Limited
24 Liability Company; and Does 1 through 50,
25 Inclusive,

26 Defendants.

Case No. 37-2020-00044771-CU-OE-CTL

FIRST AMENDED COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Barry’s Bootcamp, LLC is a limited liability company and at all
7 relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout California.

9 2. Defendant Barry’s Bootcamp San Diego LLC is a limited liability company and
10 at all relevant times mentioned herein conducted and continues to conduct substantial and
11 regular business throughout California.

12 3. Defendant Barry’s Bay Area, LLC is a limited liability company and at all relevant
13 times mentioned herein conducted and continues to conduct substantial and regular business
14 throughout California.

15 4. PLAINTIFF alleges there has existed a unity of interest and ownership between
16 these Defendants such that any individuality and separateness between the entities has ceased.
17 Defendants Barry’s Bootcamp, LLC, Barry’s Bootcamp San Diego LLC and Barry’s Bay Area,
18 LLC are therefore alter egos of each other. Adherence to the fiction of the separate existence
19 of would permit an abuse of the corporative privilege, and would promote injustice by
20 protecting Barry’s Bootcamp, LLC, Barry’s Bootcamp San Diego LLC and Barry’s Bay Area,
21 LLC from liability for the wrongful acts committed by them. As evidenced by PLAINTIFF’s
22 paychecks and company documents, Defendants Barry’s Bootcamp, LLC, Barry’s Bootcamp
23 San Diego LLC and Barry’s Bay Area, LLC were joint employers of PLAINTIFF and are
24 referred to herein as (“DEFENDANT”).

25 5. PLAINTIFF further alleges that Defendants Barry’s Bootcamp, LLC, Barry’s
26 Bootcamp San Diego, LLC and Barry’s Bay Area, LLC are alter egos of each other for the
27 following reasons:

28 (A) On the California Secretary of State’s website

1 (https://businesssearch.sos.ca.gov/) Defendant Barry's Bootcamp, LLC,
2 Barry's Bootcamp San Diego LLC and Barry's Bay Area, LLC have the
3 same entity address and/or mailing address;

4 (B) On information and belief Defendants Barry's Bootcamp, LLC, Barry's
5 Bootcamp San Diego LLC and Barry's Bay Area, LLC utilize the same
6 standardized employment forms and issue the same employment policies;
7 and,

8 (D) Barry's Bootcamp, LLC, Barry's Bootcamp San Diego LLC and Barry's
9 Bay Area, LLC all have the same agent for service of process and both
10 have the same Chief Executive Officer.

11 6. DEFENDANT provides physical training, workout classes and guides to its clients
12 amongst other services.

13 7. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
14 employee entitled to overtime pay and meal and rest periods from August of 2019 to December
15 of 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
16 as a non-exempt employee.

17 8. PLAINTIFF brings this Class Action on behalf of himself and a California class,
18 defined as all individuals who worked for Barry's Bootcamp, LLC and/or Barry's Bootcamp
19 San Diego LLC and/or Barry's Bay Area, LLC in California and classified as non-exempt
20 employees (the "CALIFORNIA CLASS") at any time during the period of time from October
21 1, 2019 through August 12, 2021 (the "CALIFORNIA CLASS PERIOD"). The amount in
22 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
23 dollars (\$5,000,000.00).

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

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

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

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

24 **THE CONDUCT**

25 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
26 calculate and pay PLAINTIFF and the other MEMBERS OF THE CALIFORNIA CLASS
27 MEMBER for all their time worked, including minimum and overtime wages. DEFENDANT
28 unlawfully and unilaterally failed to accurately calculate wages for time worked and penalties

1 for meal and rest periods owed to PLAINTIFF and other members of the CALIFORNIA
2 CLASS in order to avoid paying these employees the correct compensation. As a result,
3 PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them
4 for working without compensation at the correct minimum wage and overtime rates.
5 DEFENDANT's uniform policy and practice to not pay the members of the CALIFORNIA
6 CLASS the correct compensation for all time worked in accordance with applicable law is
7 evidenced by DEFENDANT's business records.

8 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
9 required to pay PLAINTIFF and members of the CALIFORNIA CLASS for all their time
10 worked, meaning the time during which an employee is subject to the control of an employer,
11 including all the time the employee is suffered or permitted to work. DEFENDANT required
12 PLAINTIFF and members of the CALIFORNIA CLASS to work without paying them for all
13 the time they are under DEFENDANT's control. Specifically, DEFENDANT required
14 PLAINTIFF to work while clocked out for what should be PLAINTIFF's off duty meal period
15 in order to attend to and provide fitness services for DEFENDANT's clients. As a result, the
16 PLAINTIFF and other members of the CALIFORNIA CLASS forfeited minimum wage and
17 overtime compensation by regularly working without their time being accurately recorded and
18 without compensation at the applicable minimum wage and overtime rates. DEFENDANT's
19 uniform policy and practice not to pay PLAINTIFF and other members of the CALIFORNIA
20 CLASS for all time worked is evidenced by DEFENDANT's business records.

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

1 with the law.

2 15. As a result of their rigorous work schedules, PLAINTIFF and other members of
3 the CALIFORNIA CLASS were from time to time unable to take off duty meal breaks and were
4 not fully relieved of duty for meal periods. PLAINTIFF and other members of the
5 CALIFORNIA CLASS are required to perform work as ordered by DEFENDANT for more
6 than five (5) hours during a shift without receiving an off-duty meal break. Further,
7 DEFENDANT fails to provide PLAINTIFF and members of the CALIFORNIA CLASS with
8 a second off-duty meal period from time to time in which these employees are required by
9 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other members of the
10 CALIFORNIA CLASS therefore forfeit meal breaks without the correct meal premium
11 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

12 16. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other members of
13 the CALIFORNIA CLASS were also required to work in excess of four (4) hours without being
14 provided ten (10) minute rest periods. Further, these employees are denied their first rest
15 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
16 a first and second rest period of at least ten (10) minutes for some shifts worked of between six
17 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
18 some shifts worked of ten (10) hours or more. PLAINTIFF and other members of the
19 CALIFORNIA CLASS were also not provided with one hour wages in lieu thereof. As a result
20 of their rigorous work schedules, PLAINTIFF and other members of the CALIFORNIA CLASS
21 are periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
22 managers. Additionally, DEFENDANT required PLAINTIFF and other members of the
23 CALIFORNIA CLASS to remain on DEFENDANT's premises, and thus, were not provided
24 with California compliant off-duty rest periods. Finally, DEFENDANT failed to advise
25 PLAINTIFF and the other members of the CALIFORNIA CLASS of their right to take
26 separately and hourly paid duty-free ten (10) minute rest periods. (See *Vaquero v. Stoneledge*
27 *Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017).)

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

1 employees with an accurate itemized wage statement in writing showing, among other things,
2 gross wages earned and all applicable hourly rates in effect during the pay period and the
3 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
4 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
5 gross wages earned. Aside from the violations listed above, DEFENDANT fails to issue to
6 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
7 Code 226 *et seq.* As a result, DEFENDANT provided PLAINTIFF and the other members of
8 the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code § 226.

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

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

26 20. In the course of their employment PLAINTIFF and other members of the
27 CALIFORNIA CLASS as a business expense, were required by DEFENDANT to use their
28 own personal cellular phones as a result of and in furtherance of their job duties as employees

1 for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
2 associated with the use of their personal cellular phones for DEFENDANT's benefit.
3 Specifically, PLAINTIFF and other members of the CALIFORNIA CLASS were required by
4 DEFENDANT to use their personal cellular phones to for work related issues, including, but
5 not limited to, clocking into PayCom to login his hours for work. As a result, in the course of
6 his employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
7 CLASS incurred unreimbursed business expenses which include, but are not limited to, costs
8 related to the use of their personal cellular phones all on behalf of and for the benefit of
9 DEFENDANT.

10 21. By reason of this uniform conduct applicable to PLAINTIFF and all members of
11 the CALIFORNIA CLASS, DEFENDANT engaged in a company-wide policy and procedure
12 which fails to accurately calculate and record the correct compensation for all time worked by
13 PLAINTIFF and other members of the CALIFORNIA CLASS. The proper calculation of these
14 employees' compensation is the DEFENDANT's burden. As a result of DEFENDANT's
15 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly
16 calculate and/or pay all required compensation for work performed by the members of the
17 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
18 thereunder as herein alleged.

19 20 **JURISDICTION AND VENUE**

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

25 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
27 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
28 in this County and/or conducts substantial business in this County, and (ii) committed the

wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CALIFORNIA CLASS

24. PLAINTIFF brings 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 of time from October 1, 2019 through August 12, 2021 (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).

25. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS members for all time worked and at the correct rate, and failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work.

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

27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA

1 CLASS Members is impracticable.

2 28. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
3 law by:

- 4 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
5 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
6 deceptively having in place company policies, practices and procedures
7 that failed to record and correctly pay PLAINTIFF and the other members
8 of the CALIFORNIA CLASS for all time worked, including minimum
9 wages owed and overtime wages owed for work performed by these
10 employees;
- 11 (b) Committing an act of unfair competition in violation of the UCL, by
12 failing to provide the PLAINTIFF and the other members of the
13 CALIFORNIA CLASS with the legally required meal and rest periods;
14 and,
- 15 (c) Committing an act of unfair competition in violation of the California
16 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
17 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
18 the CALIFORNIA CLASS members with necessary expenses incurred in
19 the discharge of their job duties.

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

- 22 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
23 that the joinder of all such persons is impracticable and the disposition of
24 their claims as a class will benefit the parties and the Court;
- 25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the CALIFORNIA
27 CLASS will apply to every member of the CALIFORNIA CLASS;
- 28 (c) The claims of the representative PLAINTIFF are typical of the claims of

1 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
2 other members of the CALIFORNIA CLASS, was classified as a non-
3 exempt employee paid on an hourly basis who was subjected to the
4 DEFENDANT's deceptive practice and policy which failed to provide the
5 legally required meal and rest periods to the CALIFORNIA CLASS and
6 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
7 CLASS. PLAINTIFF sustained economic injury as a result of
8 DEFENDANT's employment practices. PLAINTIFF and the members of
9 the CALIFORNIA CLASS were and are similarly or identically harmed
10 by the same unlawful, deceptive, and unfair misconduct engaged in by
11 DEFENDANT; and,

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

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

- 22 (a) Without class certification and determination of declaratory, injunctive,
23 statutory and other legal questions within the class format, prosecution of
24 separate actions by individual members of the CALIFORNIA CLASS will
25 create the risk of:
26 1) Inconsistent or varying adjudications with respect to individual
27 members of the CALIFORNIA CLASS which would establish
28 incompatible standards of conduct for the parties opposing the

CALIFORNIA CLASS; and/or,

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

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

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

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

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be

1 avoided to recover the relatively small amount of economic losses
2 sustained by the individual CALIFORNIA CLASS Members when
3 compared to the substantial expense and burden of individual
4 prosecution of this litigation;

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

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

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

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

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

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

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

the business records of DEFENDANT; and,

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

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

THE CALIFORNIA LABOR SUB-CLASS

33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period of time from October 1, 2019 through August 12, 2021(the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

34. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully

1 profit.

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

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

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

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

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

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

liable pursuant to Cal. Lab. Code § 1194;

- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks; and,
- (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties; and,
- (g) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

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

1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this Complaint are common to the CALIFORNIA
3 LABOR SUB-CLASS and will apply to every member of the
4 CALIFORNIA LABOR SUB-CLASS;

5 (c) The claims of the representative PLAINTIFF are typical of the claims of
6 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
7 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
8 was a non-exempt employee paid on an hourly basis who was subjected
9 to the DEFENDANT's practice and policy which failed to pay the correct
10 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
11 PLAINTIFF sustained economic injury as a result of DEFENDANT's
12 employment practices. PLAINTIFF and the members of the
13 CALIFORNIA LABOR SUB-CLASS were and are similarly or
14 identically harmed by the same unlawful, deceptive, and unfair
15 misconduct engaged in by DEFENDANT; and,

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

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

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

SUB-CLASS will create the risk of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

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

1 engage in a business practice which violates California law, including but not limited to, the
2 applicable Industrial Wage Order(s), the California Code of Regulations and the California
3 Labor Code, including Sections 201, 202, 203, 204, *et seq.*, 210, 226(a), 226.7, 351, 510, 512,
4 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, 2699.5; California Code of Regulations, Title 8,
5 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section
6 11070(14); The Fair Labor Standards Act and federal regulations promulgated thereunder, for
7 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
8 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
9 unfair competition, including restitution of wages wrongfully withheld.

10 46. By the conduct alleged herein, DEFENDANT's practices were unlawful and
11 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
12 unscrupulous or substantially injurious to employees, and were without valid justification or
13 utility for which this Court should issue equitable and injunctive relief pursuant to Section
14 17203 of the California Business & Professions Code, including restitution of wages wrongfully
15 withheld.

16 47. By the conduct alleged herein, DEFENDANT's practices were deceptive and
17 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
18 meal and rest periods, the required amount of compensation for missed meal and rest periods
19 and overtime and minimum wages owed, failed to timely pay wages, failed to reimburse all
20 necessary business expenses incurred, and failed to pay Fair Labor Standards Act overtime
21 wages due for overtime worked as a result of failing to include non-discretionary incentive
22 compensation into their regular rate for purposes of computing the proper overtime pay, due to
23 a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
24 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
25 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
26 Prof. Code § 17203, including restitution of wages wrongfully withheld.

27 48. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
28 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

3 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
5 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
6 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

26 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
2 unfair business practices, including earned but unpaid wages for all time worked.

3 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
4 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
5 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
6 engaging in any unlawful and unfair business practices in the future.

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

14
15 **SECOND CAUSE OF ACTION**

16 **For Failure To Pay Minimum Wages**

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

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

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

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

28 59. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and

1 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

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

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

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

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

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

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

23 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
25 interest, statutory costs, as well as the assessment of any statutory penalties against
26 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
27 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
28 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S

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

7
8 **THIRD CAUSE OF ACTION**

9 **For Failure To Pay Overtime Compensation**

10 **[Cal. Lab. Code §§ 510]**

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

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

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

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

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

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

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

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

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

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

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

25 80. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
26 from the overtime requirements of the law. None of these exemptions are applicable to the
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not

1 subject to a valid collective bargaining agreement that would preclude the causes of action
2 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
3 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
4 negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

27 85. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for

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

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

18 **FOURTH CAUSE OF ACTION**

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

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

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

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

26 88. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
27 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
28

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

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

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

24 ///

25 ///

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

9 92. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
10 time to time required to work in excess of four (4) hours without being provided ten (10) minute
11 rest periods. Further, these employees from time to time were denied their first rest periods of
12 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
13 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
14 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
15 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
16 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
17 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
19 periods by DEFENDANT and DEFENDANT's managers. Additionally, DEFENDANT
20 required PLAINTIFF and other members of the CALIFORNIA CLASS to remain on
21 DEFENDANT's premises, and thus, were not provided with California compliant off-duty rest
22 periods. Finally, DEFENDANT failed to advise PLAINTIFF and the other members of the
23 CALIFORNIA CLASS of their right to take separately and hourly paid duty-free ten (10)
24 minute rest periods. (See *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110
25 (2017).)

26 93. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
28 CLASS Members who were not provided a rest period, in accordance with the applicable Wage

1 Order, one additional hour of compensation at each employee's regular rate of pay for each
2 workday that rest period was not provided.

3 94. As a proximate result of the aforementioned violations, PLAINTIFF 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.

7 **SIXTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 2802]**

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

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

15 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

16 An employer shall indemnify his or her employee for all necessary expenditures
17 or losses incurred by the employee in direct consequence of the discharge of his
18 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.

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

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

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

13 14 **SEVENTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 226]**

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

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

22 100. Cal. Labor Code § 226 provides that an employer must furnish employees with
23 an "accurate itemized" statement in writing showing:

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

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

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

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

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

4
5 **EIGHTH CAUSE OF ACTION**

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

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

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

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

13 104. Cal. Lab. Code § 200 states that:

14 As used in this article:

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

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

19 105. Cal. Lab. Code § 201 states, in relevant part, that "If an employer discharges an
employee, the wages earned and unpaid at the time of discharge are due and payable
20 immediately."

21 106. Cal. Lab. Code § 202 states, in relevant part, that:

22 If an employee not having a written contract for a definite period quits his or
23 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
24 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
25 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
26 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
27 hours of the notice of quitting.

1 107. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR
2 SUB-CLASS Members' employment contract.

3 108. Cal. Lab. Code § 203 states:

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

10 109. When PLAINTIFF left employment with DEFENDANT, DEFENDANT still
11 owed PLAINTIFF wages for work performed because PLAINTIFF was not compensated
12 correctly for all his time worked and wages earned. To date, DEFENDANT has not paid
13 PLAINTIFF these wages still owed to him. As such, DEFENDANT has not fully paid
14 PLAINTIFF all wages still owed to him or any penalty wages that are now owed to him under
15 California Labor Code § 203.

16 110. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-
17 CLASS Members has terminated, yet as to those individuals whose employment terminated,
18 DEFENDANTS did not timely tender payment of all wages owed as required by law.

19 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
20 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,
21 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
22 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated
23 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and
24 statutory costs as allowed.

25 **NINTH CAUSE OF ACTION**

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

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

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

112. PLAINTIFF incorporates by reference the allegations set forth in the prior
paragraphs, *supra*, as though fully set forth at this point.

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

114. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by Barry's Bootcamp, LLC and/or Barry's Bootcamp San Diego LLC and/or Barry's Bay Area, LLC in California and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time period of October 1, 2019 through August 12, 2021(the "PAGA PERIOD").

115. On October 1, 2020, PLAINTIFF gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

116. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed

1 to pay wages when due, (e) failed to pay minimum wages, (f) failed to reimburse for necessary
2 business expenses incurred, (g) failed to pay reporting time pay, (h) failed to keep accurate time
3 records, and (i) failed to provide suitable seating, all in violation of the applicable Labor Code
4 sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351,
5 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
6 8, Section 11040, Subdivision 5(A)-(B) and the applicable Industrial Wage Order(s), and
7 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks
8 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act
9 of 2004 as the representative of the State of California for the illegal conduct perpetrated on
10 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

11 **PRAYER FOR RELIEF**

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

14 1. On behalf of the CALIFORNIA CLASS:

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

25 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
26

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

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
2 Eighth Causes Action asserted by the CALIFORNIA LABOR SUB-CLASS as
3 a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
7 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
8 statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;
- 16 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
17 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
18 costs of suit; and,
- 19 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
20 1197; and,
- 21 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
22 CLASS as a penalty from the due date thereof at the same rate until paid or until
23 an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 24 3. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:
- 26 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004; and,
- 28 B) An award of attorneys' fees and cost of suit, as allowable under the

1 law, including, but not limited to, pursuant to Labor Code §2699.

2 4. On all claims:

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

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

5 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
6 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
7 and/or §2802.

8
9 Dated: March 29, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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11 By: /s/ Norman B. Blumenthal
12 Norman B. Blumenthal
13 Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: March 29, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff