

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

Assigned for all purposes to
Judge Jeffrey B. Jones
including trial

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF IMPERIAL

MICHAEL HONEA, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

SPENCER CONSTRUCTION LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. ECU001860

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO 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;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PROVIDE PERSONNEL FILES IN VIOLATION OF CAL. LAB. CODE § 1198.5;
10. TERMINATION IN VIOLATION OF PUBLIC POLICY [LABOR CODE §§ 1102.5 AND 6310];
11. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *ET SEQ.*; and,
12. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Spencer Construction LLC (“DEFENDANT”) is a limited liability
7 company that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT operates a construction business. DEFENDANT specializes in
10 border infrastructure improvements.

11 3. PLAINTIFF was employed by DEFENDANT in California from December of
12 2019 to June of 2020 and was at all times classified by DEFENDANT as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
19 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
20 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
25 failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged
26 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
27 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
28 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction

1 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
2 the other members of the CALIFORNIA CLASS who have been economically injured by
3 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
4 equitable relief.

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

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

22 23 **THE CONDUCT**

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
28 and CALIFORNIA CLASS Members to work without paying them for all the time they were

1 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
2 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
3 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
4 should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and
5 CALIFORNIA CLASS Members would clock out of DEFENDANT's timekeeping system, in
6 order to perform additional work for DEFENDANT as required to meet DEFENDANT's job
7 requirements. Further, PLAINTIFF and other members of the CALIFORNIA CLASS from
8 time to time were not paid wages for all time worked, including overtime wages, such that in
9 the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and
10 practice of unevenly rounding time worked by its employees. DEFENDANT's policy and
11 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked,
12 is evidenced by DEFENDANT's business records.

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

24 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
25 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
26 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
27 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
28 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes

1 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
3 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
4 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage
5 Order requires employers to provide employees with off-duty rest periods, which the California
6 Supreme Court defined as time during which an employee is relieved from all work related
7 duties and free from employer control. In so doing, the Court held that the requirement under
8 California law that employers authorize and permit all employees to take rest period means that
9 employers must relieve employees of all duties and relinquish control over how employees
10 spend their time which includes control over the locations where employees may take their rest
11 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
12 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
13 other CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
14 Defendant's rule which stated PLAINTIFF and other CALIFORNIA CLASS Members could
15 not leave the work premises during their rest period.

16 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
17 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
18 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
19 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
20 all time worked, meaning the time during which an employee was subject to the control of an
21 employer, including all the time the employee was permitted or suffered to permit this work.
22 DEFENDANT required these employees to work off the clock without paying them for all the
23 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
24 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
25 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
26 Members forfeited time worked by working without their time being accurately recorded and
27 without compensation at the applicable minimum wage and overtime wage rates. To the extent
28 that the time worked off the clock did not qualify for overtime premium payment,

1 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
2 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

13 13. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
14 Members as a business expense, were required by DEFENDANT to use their own personal
15 cellular phones as a result of and in furtherance of their job duties as employees for
16 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
17 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
18 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
19 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
20 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
21 for the benefit of DEFENDANT.

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

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

5 15. DEFENDANT underpaid sick pay wages to PLAINTIFF and other members of
6 the CALIFORNIA CLASS by failing to pay such wages at the regular rate of pay. Specifically,
7 PLAINTIFF and other non-exempt employees earned non-discretionary remuneration, including
8 but not limited to, incentives and bonuses. Rather than pay sick pay at the regular rate of pay,
9 DEFENDANT underpaid sick pay to PLAINTIFF and other members of the CALIFORNIA
10 CLASS at their base rates of pay.

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

18 17. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
19 to collect or receive from an employee any part of wages theretofore paid by said employer to
20 said employee.” DEFENDANT made unlawful deductions from compensation payable to
21 PLAINTIFF and the CALIFORNIA CLAS, failed to disclose all aspects of the deductions from
22 compensation payable to PLAINTIFF and the CALIFORNIA CLASS, and thereby failed to pay
23 these employees all wages due at each applicable pay period and upon termination.

24 18. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
26 a matter of company policy, practice and procedure, intentionally and knowingly failed to
27 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal
28 and rest periods. This policy and practice of DEFENDANT is intended to purposefully avoid

1 the payment for all time worked as required by California law which allows DEFENDANT to
2 illegally profit and gain an unfair advantage over competitors who complied with the law. To
3 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
4 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

5 19. DEFENDANT also violated Cal. Lab. Code Section 1198.5 by failing to respond
6 and provide PLAINTIFF with his employment file. Section 1198.5 states that employees
7 (and former employees) have the right to inspect personnel records maintained by the employer
8 “related to the employee’s performance or to any grievance concerning the employee.”
9 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
10 requested his employment file via certified mail twice and DEFENDANT failed
11 to respond each time. As a result, PLAINTIFF is now entitled to a statutory penalty of \$750
12 and an award of attorneys’ fees and costs for bringing this action.

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

23 21. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
24 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
25 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
26 did not have a policy or practice which provided timely off-duty meal and rest breaks to
27 PLAINTIFF and also failed to compensate PLAINTIFF for him missed meal and rest breaks.
28 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved

1 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's
2 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
3 DEFENDANT's business records. As a result of DEFENDANT not accurately recording all
4 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
5 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
6 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him
7 and DEFENDANT has failed to pay any penalty wages owed to him under California Labor
8 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
9 the sum or value of \$75,000.

10 11 **JURISDICTION AND VENUE**

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

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

21 22 **THE CALIFORNIA CLASS**

23 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
25 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
26 all individuals who are or previously were employed by DEFENDANT in California and
27 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
28 period beginning four (4) years prior to the filing of this Complaint and ending on the date as

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

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

7 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
8 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
9 requirements, and the applicable provisions of California law, intentionally, knowingly, and
10 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
11 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT
12 enjoyed the benefit of this work, required employees to perform this work and permits or suffers
13 to permit this work.

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

23 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

25 29. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
26 law by:

- 27 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
28 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or

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

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

- 16 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
17 that the joinder of all such persons is impracticable and the disposition of
18 their claims as a class will benefit the parties and the Court;
- 19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
20 that are raised in this Complaint are common to the CALIFORNIA
21 CLASS will apply to every member of the CALIFORNIA CLASS;
- 22 (c) The claims of the representative PLAINTIFF are typical of the claims of
23 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
24 other members of the CALIFORNIA CLASS, was classified as a non-
25 exempt employee paid on an hourly basis who was subjected to the
26 DEFENDANT's deceptive practice and policy which failed to provide the
27 legally required meal and rest periods to the CALIFORNIA CLASS and
28 thereby underpaid compensation to PLAINTIFF and CALIFORNIA

1 CLASS. PLAINTIFF sustained economic injury as a result of
2 DEFENDANT's employment practices. PLAINTIFF and the members of
3 the CALIFORNIA CLASS were and are similarly or identically harmed
4 by the same unlawful, deceptive and unfair misconduct engaged in by
5 DEFENDANT; and,

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

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

- 16 (a) Without class certification and determination of declaratory, injunctive,
17 statutory and other legal questions within the class format, prosecution of
18 separate actions by individual members of the CALIFORNIA CLASS will
19 create the risk of:
- 20 1) Inconsistent or varying adjudications with respect to individual
21 members of the CALIFORNIA CLASS which would establish
22 incompatible standards of conduct for the parties opposing the
23 CALIFORNIA CLASS; and/or,
- 24 2) Adjudication with respect to individual members of the
25 CALIFORNIA CLASS which would as a practical matter be
26 dispositive of interests of the other members not party to the
27 adjudication or substantially impair or impede their ability to
28 protect their interests.

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

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

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

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

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

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

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

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

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

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

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

27 (b) A Class Action is superior to any other available method for the fair and
28 efficient adjudication of the claims of the members of the CALIFORNIA

1 CLASS because in the context of employment litigation a substantial
2 number of individual CALIFORNIA CLASS Members will avoid
3 asserting their rights individually out of fear of retaliation or adverse
4 impact on their employment;

5 (c) The members of the CALIFORNIA CLASS are so numerous that it is
6 impractical to bring all members of the CALIFORNIA CLASS before the
7 Court;

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

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

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

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

22 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
23 the business records of DEFENDANT; 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 CLASS.

28 33. DEFENDANT maintains records from which the Court can ascertain and identify

1 by job title each of DEFENDANT's employees who have been intentionally subjected to
2 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will
3 seek leave to amend the Complaint to include any additional job titles of similarly situated
4 employees when they have been identified.

5
6 **THE CALIFORNIA LABOR SUB-CLASS**

7 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
8 Eighth of Action on behalf of a California sub-class, defined as all members of the
9 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
10 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
11 to the filing of the complaint and ending on the date as determined by the Court (the
12 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
13 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
14 Members is under five million dollars (\$5,000,000.00).

15 35. DEFENDANT, as a matter of company policy, practice and procedure, and in
16 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
17 requirements, and the applicable provisions of California law, intentionally, knowingly, and
18 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
19 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
20 LABOR SUB-CLASS and reporting time wages owed to these employees, even though
21 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
22 permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA
23 LABOR SUB-CLASS Members wages to which these employees are entitled in order to
24 unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates
25 to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
26 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

27 36. DEFENDANT maintains records from which the Court can ascertain and identify
28 by name and job title, each of DEFENDANT's employees who have been intentionally

1 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
2 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
3 similarly situated employees when they have been identified.

4 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
5 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

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

40. 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;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the

CALIFORNIA LABOR SUB-CLASS;

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

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

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

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

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which

1 would establish incompatible standards of conduct for the parties
2 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

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

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA LABOR SUB-
5 CLASS, which would establish incompatible standards of
6 conduct for the DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS would as a practical
9 matter be dispositive of the interests of the other members
10 not parties to the adjudication or substantially impair or
11 impede their ability to protect their interests;
- 12 3) In the context of wage litigation because a substantial number of
13 individual CALIFORNIA LABOR SUB-CLASS Members will
14 avoid asserting their legal rights out of fear of retaliation by
15 DEFENDANT, which may adversely affect an individual's job
16 with DEFENDANT or with a subsequent employer, the Class
17 Action is the only means to assert their claims through a
18 representative; and,
- 19 4) A class action is superior to other available methods for the fair
20 and efficient adjudication of this litigation because class treatment
21 will obviate the need for unduly and unnecessary duplicative
22 litigation that is likely to result in the absence of certification of
23 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (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)

43. 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.

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

45. 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.

46. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 1198.5

1 & 2802, The Fair Labor Standards Act and federal regulations promulgated thereunder, for
2 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
3 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
4 unfair competition, including restitution of wages wrongfully withheld.

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

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

23 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
24 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANT.

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

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

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

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

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

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

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

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

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

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

10
11 **SECOND CAUSE OF ACTION**

12 **For Failure To Pay Minimum Wages**

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

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

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

19 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
21 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
22 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
23 Members.

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

26 61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
27 commission is the minimum wage to be paid to employees, and the payment of a less wage than
28 the minimum so fixed is unlawful.

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

3 63. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
4 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
5 Members to work without paying them for all the time they were under DEFENDANT's
6 control. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
8 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
9 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

27 68. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS for the true time they worked, PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
3 injury in amounts which are presently unknown to them and which will be ascertained
4 according to proof at trial.

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

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

19 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
21 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
22 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
23 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
24 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
25 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
26 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
27 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
28 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA

LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

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

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

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

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

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

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

77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by

1 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
2 including overtime work.

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

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

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

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

28 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
2 worked that they are entitled to, constituting a failure to pay all earned wages..

3 83. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
4 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
5 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
6 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
7 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
8 failed to accurately record and pay as evidenced by DEFENDANT's business records and
9 witnessed by employees.

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

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

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

1 to increase company profits at the expense of these employees.

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

13
14 **FOURTH CAUSE OF ACTION**

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

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

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

19 88. 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 89. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
23 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
24 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
25 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
26 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
27 duties for the legally required off-duty meal periods. As a result of their rigorous work
28 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from

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

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

15 91. As a proximate result of the aforementioned violations, PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
17 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
18 suit.

19
20 **FIFTH CAUSE OF ACTION**

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

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

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

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

28 93. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from

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

11 94. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
12 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
13 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
14 Order, one additional hour of compensation at each employee's regular rate of pay for each
15 workday that rest period was not provided.

16 95. As a proximate result of the aforementioned violations, PLAINTIFF and
17 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
19 suit.

20
21 **SIXTH CAUSE OF ACTION**

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

23 **[Cal. Lab. Code § 2802]**

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

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

1 97. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

5 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
6 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
7 CLASS members for required expenses incurred in the discharge of their job duties for
8 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
9 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
10 limited to, costs related to using their personal cellular phones all on behalf of and for the
11 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS
12 Members were required by DEFENDANT to use their personal cell phones to respond to
13 work related issues. DEFENDANT's policy, practice and procedure was to not reimburse
14 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting
15 from using their personal cellular phones for DEFENDANT within the course and scope of
16 their employment for DEFENDANT. These expenses were necessary to complete their
17 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
18 waiver of this expectation. Although these expenses were necessary expenses incurred by
19 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed
20 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
21 members for these expenses as an employer is required to do under the laws and regulations
22 of California.

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

27 ///

1 **SEVENTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

6 100. PLAINTIFF, 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.

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

- 11 (1) gross wages earned,
12 (2) total hours worked by the employee, except for any employee whose
13 compensation is solely based on a salary and who is exempt from payment of
14 overtime under subdivision (a) of Section 515 or any applicable order of the
15 Industrial Welfare Commission,
16 (3) the number of piecerate units earned and any applicable piece rate if the employee
17 is paid on a piece-rate basis,
18 (4) all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item,
20 (5) net wages earned,
21 (6) the inclusive dates of the period for which the employee is paid,
22 (7) the name of the employee and his or her social security number, except that by
23 January 1, 2008, only the last four digits of his or her social security number or an
24 employee identification number other than a social security number may be shown on
25 the itemized statement,
26 (8) the name and address of the legal entity that is the employer, and
27 (9) all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee.

102. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
wage statements which failed to show, among other things, the correct gross and net wages
earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
employees with an accurate itemized wage statement in writing showing, among other
things, gross wages earned and all applicable hourly rates in effect during the pay period and
the corresponding amount of time worked at each hourly rate. Aside, from the violations
listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized

1 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
2 result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
4 § 226.

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

17
18 **EIGHTH CAUSE OF ACTION**

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

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

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

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

26 105. Cal. Lab. Code § 200 provides that:

27 As used in this article:

28 (a) "Wages" includes all amounts for labor performed by employees of every

1 description, whether the amount is fixed or ascertained by the standard of
2 time, task, piece, Commission basis, or other method of calculation.

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

5 106. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer
6 discharges an employee, the wages earned and unpaid at the time of discharge are due and
7 payable immediately."

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

9 If an employee not having a written contract for a definite period quits his or
10 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
11 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
12 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
13 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.

14 108. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
15 SUB-CLASS Members' employment contract.

16 109. Cal. Lab. Code § 203 provides:

17 If an employer willfully fails to pay, without abatement or reduction, in
18 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
19 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
20 more than 30 days.

21 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
22 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
23 these employees who missed meal and rest breaks, as required by law.

24 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
25 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
26 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time
27 of termination for all employees who terminated employment during the CALIFORNIA
28 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,

1 plus interest and statutory costs as allowed by law.

2
3 **NINTH CAUSE OF ACTION**

4 **For Failure to Provide Personnel Files**

5 **[Cal. Lab. Code § 1198.5]**

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

7 112. PLAINTIFF incorporates by reference the allegations set forth in the previous
8 paragraph of this Complaint as though fully set forth at this point.

9 113. On July 16, 2020 and September 18, 2020, PLAINTIFF's counsel of record, as
10 PLAINTIFF's legal representative, caused written requests via certified mail to be delivered
11 to DEFENDANT for PLAINTIFF's personnel and employment records, including but not
12 limited to (1) payroll records, (2) employment contracts; (3) itemized pay stubs, and (4)
13 PLAINTIFF's complete employment file, true and correct copies of which are attached
14 hereto as Exhibit #1.

15 114. DEFENDANT failed to provide and/or make available to PLAINTIFF for his
16 personnel records, payroll records, employment contracts, and entire employment file within
17 thirty (30) of all her requests stated above. In fact, as of the filing of this First Amended
18 Complaint, DEFENDANT still has not provided PLAINTIFF his personnel records, pay
19 stubs, and employment file and DEFENDANT has failed to pay PLAINTIFF the statutory
20 penalty in the amount of \$750.

21 115. DEFENDANT has repeatedly violated Cal. Lab. Code Section 1198.5 by
22 failing to respond and provide PLAINTIFF with his employment file. Section 1198.5 states
23 that employees (and former employees) have the right to inspect personnel records
24 maintained by the employer "related to the employee's performance or to any grievance
25 concerning the employee." Employers must allow inspection or copying within thirty (30)
26 days of the request. PLAINTIFF requested his employment file via certified mail two (2)
27 times and DEFENDANT failed to respond each time. As a result, PLAINTIFF is now
28 entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section

1 1198.5, a statutory penalty of \$750, and an award of attorneys' fees and costs for bringing
2 this action.

3
4 **TENTH CAUSE OF ACTION**

5 **Wrongful Termination**

6 **[Wrongful Termination in Violation of Public Policy]**

7 **[Discrimination against employee for filing complaint or otherwise exercising rights in**
8 **Violation of Cal. Lab. Code §§ 1102.5 and 6310]**

9 **(By PLAINTIFF Against All Defendants)**

10 116. PLAINTIFF realleges and incorporates by reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

12 117. In retaliation for complaining to DEFENDANT of DEFENDANT's violations
13 of safety on the worksite, DEFENDANT retaliated against and wrongfully discharged
14 PLAINTIFF from employment, in violation of Cal. Lab. Code §§ 1102.5 and 6310.
15 DEFENDANT committed safety standard violations, including but not limited to asbestos,
16 chemical concerns and other carcinogen hazards at PLAINTIFF's assigned work locations,
17 and when PLAINTIFF complained of such violations to DEFENDANT, PLAINTIFF was
18 subsequently terminated.

19 118. Throughout PLAINTIFF's employment with DEFENDANT, DEFENDANT
20 failed to properly maintain standard safety measures at job sites, including but not limited to
21 asbestos, chemical concerns and other carcinogen hazards. As such, PLAINTIFF was placed
22 in a constant risk of harm while performing his job duties for DEFENDANT. PLAINTIFF
23 informed DEFENDANT about such safety issues, but to no avail. In or around April of
24 2020, and continuing through out the rest of PLAINTIFF's employment, PLAINTIFF
25 engaged in protected activity by complaining to DEFENDANT of DEFENDANT's failure
26 to maintain compliant safety standards, including, but not limited to, DEFENDANT's
27 failure to maintain the safety of their worksite as it pertained to asbestos, chemical concerns
28 and other carcinogen hazards. As a direct consequence of PLAINTIFF's complaints to

1 DEFENDANT, DEFENDANT retaliated against PLAINTIFF by terminating his
2 employment in June of 2020.

3 119. Subsequent to PLAINTIFF's participation in protective activity by
4 complaining to DEFENDANT of DEFENDANT's unlawful employment practices,
5 DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against
6 PLAINTIFF. Specifically, after PLAINTIFF complained to his supervisor(s) of
7 DEFENDANT's unlawful employment practices, DEFENDANT terminated PLAINTIFF's
8 employment with DEFENDANT. As a result, there is a causal link between the protected
9 activity and DEFENDANT's decision to terminate his employment, which is against public
10 policy.

11 120. Cal. Labor Code § 1102.5, et seq. prohibits an employer from taking an
12 adverse employment action against an employee for terminating an employee's employment
13 for raising complaints of illegality and/or belief that the employee may disclose illegality.

14 121. Cal. Labor Code § 6310 prohibits discrimination against employees for filing
15 complaints or otherwise exercising their rights by complaining of illegal employment
16 practices.

17 122. PLAINTIFF was harmed by DEFENDANT's wrongful and illegal termination
18 of his employment, in retaliation for PLAINTIFF's complaining to DEFENDANT of
19 DEFENDANT's unlawful employment practices.

20 123. The wrongful termination of the employment of PLAINTIFF was and is a
21 substantial factor in causing harm to PLAINTIFF.

22
23 **ELEVENTH CAUSE OF ACTION**

24 **Retaliation**

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

26 **(By PLAINTIFF Against All Defendants)**

27 124. PLAINTIFF realleges and incorporates by reference, as though fully set forth
28 herein, the prior paragraphs of this Complaint.

1 125. At all relevant times, Labor Code section 1102.5 was in effect and was
2 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against
3 any employee, including PLAINTIFF, for raising complaints of illegality and/or belief that
4 the employee may disclose illegality.

5 126. Throughout PLAINTIFF's employment with DEFENDANT, DEFENDANT
6 failed to properly maintain standard safety measures at job sites. As such, PLAINTIFF was
7 placed in a constant risk of harm while performing his job duties for DEFENDANT.
8 PLAINTIFF informed DEFENDANT about such safety issues, but to no avail. In or around
9 April of 2020, and continuing through out the rest of PLAINTIFF's employment,
10 PLAINTIFF engaged in protected activity by complaining to DEFENDANT of
11 DEFENDANT's failure to maintain compliant safety standards, including, but not limited
12 to, DEFENDANT's failure to maintain the safety of their worksite as it pertained to
13 asbestos, chemical concerns and other carcinogen hazards. As a direct consequence of
14 PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated against PLAINTIFF
15 by terminating his employment in June of 2020.

16 127. PLAINTIFF raised complaints of illegality while he worked for
17 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
18 retaliated against him by taking adverse employment actions, including employment
19 termination, against him.

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

24 129. As a result of DEFENDANT'S adverse employment actions against
25 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
26 proof.

27 130. DEFENDANT'S misconduct was committed intentionally, in a malicious,
28 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages

1 against defendants.

2 **TWELFTH CAUSE OF ACTION**

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

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

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

6 131. PLAINTIFF realleges and incorporates by reference, as though fully set forth
7 herein, the prior paragraphs of this Complaint.

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

18 133. PLAINTIFF, and such persons that may be added from time to time who
19 satisfy the requirements and exhaust the administrative procedures under the Private
20 Attorney General Act, brings this Representative Action on behalf of the State of California
21 with respect to himself and all individuals who are or previously were employed by
22 DEFENDANT in California and classified as non-exempt employees (the "AGGRIEVED
23 EMPLOYEES") during the time period of November 20, 2019 until a date as determined by
24 the Court (the "PAGA PERIOD").

25 134. On November 20, 2020, PLAINTIFF gave written notice by electronic mail to
26 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
28 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations

1 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
2 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
3 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 135. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
6 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
7 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
8 wages, (d) failed to pay minimum wages, (e) failed to provide wages when due, (f) failed to
9 reimburse employees for required expenses, and (g) failed to provide personnel files, all in
10 violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
11 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
12 1198.5, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
13 and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a
14 result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed
15 by the Labor Code Private Attorney General Act of 2004 as the representative of the State of
16 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES.

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

23 ///

24 ///

25 ///

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 D) The wages of all terminated employees from the CALIFORNIA LABOR
- 2 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
- 3 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 4 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 5 the applicable IWC Wage Order;
- 6 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 7 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
- 8 costs of suit;
- 9 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 10 1197; and,
- 11 H) Injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5,
- 12 statutory penalties, reasonable costs and attorney's fees.
- 13 3. On behalf of PLAINTIFF for the Tenth and Eleventh Causes of Action:
- 14 A) For all special damages which were sustained as a result of DEFENDANT's
- 15 conduct, including, but not limited to, back pay, front pay, lost compensation and
- 16 job benefits that PLAINTIFF would have received but for the retaliatory practices
- 17 of DEFENDANT; and,
- 18 B) For all exemplary damages, according to proof, which were sustained as a result
- 19 of DEFENDANT's conduct.
- 20 4. On behalf of the State of California and with respect to all AGGRIEVED
- 21 EMPLOYEES:
- 22 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
- 23 General Act of 2004.
- 24 5. On all claims:
- 25 A) An award of interest, including prejudgment interest at the legal rate;
- 26 B) Such other and further relief as the Court deems just and equitable; and,
- 27 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 28 law, including, but not limited to, pursuant to Labor Code §226, §1194, §1198.5

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and/or §2802.

Dated: April 15, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 

Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik

Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: April 15, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 

Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Attorneys for Plaintiff

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Chicago

Phone: (858) 952-0354

Fax: (858) 551-1232

Email: Nick@bamlawca.com

July 16, 2020

CA2190

VIA CERTIFIED MAIL

SPENCER CONSTRUCTION LLC

10132 N ORACLE ROAD #160

ORO VALLEY, AZ 85704

Certified Mail # 70191120000066524813

Re: **Employee Michael Honea – Request for Employment Records**

Dear Human Resource Director:

Please be advised we have been retained by Michael Honea to investigate employment law violations. Mr. Honea worked for your company in California. Please direct all future communication regarding this matter to our office.

This letter is written to request copies of all itemized wage statements issued to Mr. Honea during his tenure of employment with you. Additionally, we would like a copy of Mr. Honea's complete employment file, including all documents and arbitration agreements signed by Mr. Honea and all background check disclosure and authorization forms.

Under California Labor Code Section 1198.5, an employer is required to allow an employee to inspect and receive a copy of his or her personnel records which relate to the employee's performance or to any grievance concerning the employee. The failure of an employer to permit an employee to review his or her personnel file is a misdemeanor per Labor Code Section 1199. Labor Code Section 432 also entitles an employee to receive copies of any signed documents related to the obtaining or holding of employment.

Additionally, California Labor Code Section 226(b) requires employers to make itemized wage statements for each pay period available to employees upon reasonable request. Labor Code Section 226(c) further requires that the employer comply with the request for records as soon as practicable, but no later than thirty (30) calendar days from the date of request. Finally Labor Code Section 226(f) entitles employees to recover civil penalties of \$750.00 against an employer who violates these requirements.

This request is made on behalf of Michael Honea in accordance with California Labor Code §§ 226, 1198.5, as well as the applicable Industrial Welfare Commission Wage Order, § 7(c). Please provide the records within thirty (30) days from the date of this correspondence. We would be pleased to pay for any reasonable copy charges.

Respectfully,

/s/ Nicholas De Blouw

Nicholas J. De Blouw, Esq

AUTHORIZATION FOR RELEASE OF EMPLOYMENT RECORDS

I, Michael Honea ("Client"), do hereby authorize Spencer Construction ("Employer"), to release my entire employment file, including all pay statements, time cards issued to me, arbitration agreements signed by me, background check disclosure and authorization forms signed by me, and all other documents signed by me from the date of my hire, to my attorneys at Blumenthal, Nordrehaug & Bhowmik located at 2255 Calle Clara, La Jolla, California 92037. Thank you.

Respectfully,

Michael Honea

Michael Honea (Jul 2, 2020 15:41 PDT)

Client

FACSIMILE
(858) 551-1232

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037
GENERAL E-MAIL: bamlawca@gmail.com
Web Site: www.bamlawca.com

TELEPHONE
(877) 852-3912

WRITERS E-MAIL: Nick@bamlawca.com

WRITERS EXT: 5

September 18, 2020

CA2190

VIA CERTIFIED MAIL

SPENCER CONSTRUCTION LLC
10132 N ORACLE ROAD #160
ORO VALLEY, AZ 85704
Certified Mail # 70192970000014863784

Re: **Employee Michael Honea -- Request for Employment Records**

Dear Human Resource Director:

Please be advised we have been retained by Michael Honea to investigate employment law violations. Mr. Honea worked for your company in California. Please direct all future communication regarding this matter to our office. This letter serves as our office's second request for Mr. Honea's employment records. Our first letter was sent on July 16, 2020. The Certified Mail tracking number of our first letter, #70191120000066524813, shows the letter was delivered successfully, but your company failed to respond.

Accordingly, this letter is a second written request for copies of all itemized wage statements issued to Mr. Honea during his tenure of employment with you. Additionally, we would like a copy of Mr. Honea's complete employment file, including all documents and arbitration agreements signed by Mr. Honea and all background check disclosure and authorization forms.

Under California Labor Code Section 1198.5, an employer is required to allow an employee to inspect and receive a copy of his or her personnel records which relate to the employee's performance or to any grievance concerning the employee. The failure of an employer to permit an employee to review his or her personnel file is a misdemeanor per Labor Code Section 1199. Labor Code Section 432 also entitles an employee to receive copies of any signed documents related to the obtaining or holding of employment.

Additionally, California Labor Code Section 226(b) requires employers to make payroll records available to employees upon reasonable request. Labor Code Section 226(c) further requires that the employer comply with the request for records as soon as practicable, but no later than thirty (30) calendar days from the date of our first request. Finally, Labor Code Section 226(f) entitles employees to recover civil penalties of \$750.00 against an employer who violates these requirements.

This request is made on behalf of Michael Honea in accordance with California Labor Code §§ 226, 1198.5, as well as the applicable Industrial Welfare Commission Wage Order, § 7(c). Please provide the records immediately, as the thirty (30) day deadline has already passed. We would be pleased to pay for any reasonable copy charges.

Respectfully,
/s/ Nicholas De Blouw
Nicholas J. De Blouw, Esq

Imperial Superior Court Accepted through eDelivery submitted 04-15-2021 at 12:39:24 PM

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Respectfully,

Michael Honea

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