

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 Smith

(Additional counsel on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ALONZO SMITH, DAWN WILLIAMS,
and ROMERO REYES, as individuals and
on behalf of all others similarly situated, and
as private attorneys general,

Plaintiffs,

vs.

CLEAN HARBORS ENVIRONMENTAL
SERVICES, INC., a Massachusetts
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2021-00292526

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION (BUS. & PROF. CODE §§ 17200, *et seq.*);
2. FAILURE TO PAY OVERTIME WAGES (LAB. CODE §§ 510, *et seq.*);
3. FAILURE TO PAY MINIMUM WAGES (LAB. CODE §§ 1194, 1197 & 1197.1);
4. FAILURE TO PAY PREVAILING WAGES (LAB. CODE §§ 1771, 1774);
5. FAILURE TO PAY REPORTING TIME PAY (LAB. CODE §§ 1194, 1197, AND 1198)
6. FAILURE TO PROVIDE REQUIRED MEAL PERIODS (LAB. CODE §§ 226.7 & 512);
7. FAILURE TO PROVIDE REQUIRED REST PERIODS (LAB. CODE §§ 226.7 & 512);
8. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS AND KEEP ACCURATE PAYROLL RECORDS (LAB. CODE §§ 226 AND 1174);
9. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES (LAB. CODE § 2802);
10. FAILURE TO PROVIDE WAGES WHEN DUE (LAB. CODE §§ 201, 202, 203 AND 204);
11. FAILURE TO PRODUCE EMPLOYMENT RECORDS (LAB. CODE §§ 226, 1198.5); and,
12. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (LAB CODE §§ 2698, *et seq.*)

DEMAND FOR A JURY TRIAL

1 **DIVERSITY LAW GROUP, P.C.**

Larry W. Lee (State Bar No. 228175)

2 lwlee@diversitylaw.com

Simon L. Yang (State Bar No. 260286)

3 sly@diversitylaw.com

515 South Figueroa Street, Suite 1250

4 Los Angeles, California 90071

Telephone: (213) 488-6555

5 Facsimile (213) 488-6554

6 Attorneys for Plaintiff Williams

7 Joseph Lavi, Esq. (SBN 209776)

Vincent C. Granberry, Esq. (SBN 276483)

8 Kevin Joseph Farnan, Esq. (SBN 327524)

LAVI & EBRAHIMIAN, LLP

9 8889 W. Olympic Blvd., Suite 200

Beverly Hills, California 90211

10 Telephone: (310) 432-0000

Facsimile: (310) 432-0001

11 Email: jlavi@lelawfirm.com

vgranberry@lelawfirm.com

12 kfarnan@lelawfirm.com

whteam@lelawfirm.com

13 Sahag Majarian II, Esq. (State Bar No. 146621)

14 **Law Office of Sahag Majarian II**

E-Mail: sahagii@aol.com

15 18250 Ventura Boulevard

Tarzana, California 91356

16 Telephone: (818) 609-0807

Facsimile: (818) 609-0892

17 Attorneys for Plaintiff Reyes

1 Plaintiffs Alonzo Smith, Dawn Williams, and Romero Reyes (individually and
2 collectively, “PLAINTIFF”), as individuals, on behalf of themselves and all other similarly
3 situated current and former employees, allege on information and belief, except for their own
4 acts and knowledge which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Plaintiff is informed and believes that Defendant Clean Harbors Environmental
7 Services, Inc. (“DEFENDANT”), was and is a Massachusetts corporation. Plaintiff is informed
8 and believes that at all times herein mentioned Defendant and Does 1 through 50, are and were
9 corporations, business entities, individuals, or partnerships that are and were licensed to do
10 business and actually doing business in the State of California. Based upon all the facts and
11 circumstances incident to Defendants’ business, Defendants are subject to the Labor Code
12 provisions alleged herein and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
13 17200, et seq. (the “UCL”).

14 2. DEFENDANT is a provider of environmental, energy and industrial services,
15 including hazardous waste disposal for companies, including Fortune 500 companies, small
16 waste generators and federal, state, provincial and local governments.

17 3. PLAINTIFF SMITH was employed by DEFENDANT in California as a non-
18 exempt employee entitled to overtime pay and meal and rest periods from October of 2018 to
19 July of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
20 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
21 received additional compensation from DEFENDANT in the form of non-discretionary incentive
22 wages.

23 4. PLAINTIFF WILLIAMS began working for DEFENDANT in or about April of
24 2017. Throughout her employment as a chemist until about April of 2020 when her employment
25 was terminated, PLAINTIFF WILLIAMS was paid on an hourly basis as a non-exempt
26 employee. During her employment, DEFENDANT routinely refused to provide proper and
27 timely off-duty meal and rest breaks. Rather, DEFENDANT routinely denied PLAINTIFF
28 WILLIAMS’ requests to take meal and rest breaks. Despite this, DEFENDANT automatically

1 deducted a half hour of work time from PLAINTIFF WILLIAMS' worked hours each workday.
2 PLAINTIFF WILLIAMS also would routinely work more than 8 hours per day or 40 hours per
3 workweek, as reflected by actual time punch records. Whenever wages were paid,
4 DEFENDANT would shave off such overtime hours worked by PLAINTIFF WILLIAMS. The
5 wages for time shaved off or automatically deducted were not paid to PLAINTIFF WILLIAMS
6 upon the separation of employment, and the applicable hours worked, applicable wage rates,
7 total hours worked, gross wages earned, and net wages earned were inaccurately displayed on
8 each of PLAINTIFF WILLIAMS' wage statements. Moreover, every wage statement issued by
9 DEFENDANT to PLAINTIFF WILLIAMS also failed to identify (i) the pay period start date,
10 instead identifying only the "Period Ending" date, or (ii) the applicable hourly rates of pay for
11 wages earned, instead showing only the gross wages paid for each type of wage and the
12 applicable hours used to calculate such wages.

13 5. DEFENDANT employed PLAINTIFF REYES as an hourly non-exempt field
14 technician from in or around 2015.

15 6. PLAINTIFF brings this Class Action on behalf of themselves and all current and
16 former non-exempt employees of Defendant in the State of California from April 6, 2017 to
17 February 2, 2022 (the "CLASS"). Pursuant to the Labor Code Private Attorneys General Act of
18 2004, Labor Code §§ 2698 *et seq.* ("PAGA"), PLAINTIFF also brings this PAGA Action as a
19 proxy for the State's interest in all current and former non-exempt employees of Defendant in the
20 State of California from July 28, 2019, to February 2, 2022 (the "AGGRIEVED
21 EMPLOYEES").

22 7. PLAINTIFF does not know the true names or capacities of the defendants sued
23 herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said
24 defendants are sued under such fictitious names. PLAINTIFF prays for leave to amend this
25 Complaint when the true names and capacities are known. PLAINTIFF is informed and believes
26 that each of said fictitious defendants was responsible in some way for the matters alleged herein
27 and proximately caused the illegal employment practices, wrongs, and injuries complained of
28 herein.

8. At all times herein mentioned, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

9. PLAINTIFF is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

10. PLAINTIFF is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

THE CONDUCT

11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for their minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees the correct compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for working without compensation at the correct minimum wage and overtime rates. DEFENDANT's policy and practice to not pay the members of the CALIFORNIA CLASS the correct compensation for all time worked in accordance with applicable law is evidenced by DEFENDANT's business records, including, but not limited to DEFENDANT's time rounding policy and practice. This policy and practice of DEFENDANT was intended to purposefully avoid the payment of the correct compensation as required by

1 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage over
2 competitors who complied with the law.

3 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
4 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of
5 time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
6 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
7 time worked, meaning the time during which an employee was subject to the control of an
8 employer, including all the time the employee was permitted or suffered to permit this work.
9 DEFENDANT required these employees to work off the clock without paying them for all the
10 time they were under DEFENDANT's control. Specifically, DEFENDANT required
11 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
12 meal break and/or rounded the work hours. PLAINTIFF was from time to time interrupted by
13 work assignments. Indeed there were days where PLAINTIFF did not even receive a partial
14 lunch. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum
15 wage and overtime compensation by working without their time being accurately recorded and
16 without compensation at the applicable minimum wage and overtime rates. To the extent that the
17 time worked off the clock did not qualify for overtime premium payment, DEFENDANT failed
18 to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
19 1197, and 1197.1.

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

24 14. The second component of PLAINTIFF's and other CALIFORNIA CLASS
25 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANT. The non-discretionary incentive program provided all
28 employees paid on an hourly basis with incentive compensation when the employees met the

1 various performance goals set by DEFENDANT. However, when calculating the regular rate of
2 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
3 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
4 rate of pay" for purposes of calculating overtime pay. Management and supervisors described the
5 incentive program to potential and new employees as part of the compensation package. As a
6 matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
7 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
8 in a underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS
9 Members by DEFENDANT.

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

19 16. As a result of their rigorous work schedules and/or DEFENDANT's time
20 rounding policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were
21 from time to time unable to take off duty meal breaks and were not fully relieved of duty for
22 meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were from time to time
23 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
24 without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF
25 and CALIFORNIA CLASS Members with a second off-duty meal period from time to time in
26 which these employees were required by DEFENDANT to work ten (10) hours of work.
27 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
28

1 without additional compensation and in accordance with DEFENDANT's corporate policy and
2 practice.

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

25 18. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
26 employment are due and payable twice during each calendar month, on days designated in
27 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
28 requires employers to pay employees all wages owed within seven (7) days of the close of the

1 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
2 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
3 the payroll period.

4 19. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
5 employees with an accurate itemized wage statement in writing showing, among other things,
6 gross wages earned, total hours worked, all deductions made, net wages earned, inclusive dates
7 of the pay period, the name and address of the legal entity, and all applicable hourly rates in
8 effect during the pay period and the corresponding amount of time worked at each hourly rate.
9 DEFENDANT from time to time failed to provide to PLAINTIFF and the CALIFORNIA
10 CLASS wage statements that identify the correct gross and net wages earned, the applicable
11 number of hours worked and rates of pay. Specifically, DEFENDANT violated Section 226 by
12 failing to identify the correct rates of pay and number of hours worked, including for the “Per
13 Diem NT,” “Prevailing Wage”, and “Retro Pay” items of pay, which were wage payments.
14 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
15 PLAINTIFF and other CALIFORNIA CLASS members an itemized wage statement that lists all
16 the requirements under California Labor Code 226 et seq. Similarly, DEFENDANT failed to
17 retain and keep accurate payroll records of PLAINTIFF and other CALIFORNIA CLASS
18 members, including, but not limited, the daily hours worked and wages earned in violation of
19 California Labor Code 1174.

20 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
21 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
22 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
23 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802,
24 employers are required to indemnify employees for all expenses incurred in the course and scope
25 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify
26 his or her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
28

1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful."

3 21. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost associated
7 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
8 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
9 their personal cellular phones to for work related issues. As a result, in the course of their
10 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS
11 incurred unreimbursed business expenses which included, but were not limited to, costs related
12 to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

13 22. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA
14 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the UCL,
15 by engaging in a company-wide policy and procedure which failed to accurately calculate and
16 record the correct overtime rate for the overtime worked by PLAINTIFF and other
17 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour
18 rates is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
19 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
20 overtime compensation for work performed by the members of the CALIFORNIA CLASS and
21 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

22 23. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to
23 him in the form of two components. One component of PLAINTIFF's compensation was a base
24 hourly wage. The second component of PLAINTIFF's compensation were nondiscretionary
25 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain
26 predefined performance requirements. PLAINTIFF met DEFENDANT's predefined eligibility
27 performance requirements in various pay periods throughout his employment with
28 DEFENDANT and DEFENDANT paid PLAINTIFF the non-discretionary incentive wages.

1 During these pay periods in which PLAINTIFF was paid the nondiscretionary incentive wages
2 by DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but DEFENDANT
3 never included the incentive compensation in PLAINTIFF's regular rate of pay for the purposes
4 of calculating what should have been PLAINTIFF's accurate overtime rate and thereby
5 underpaid PLAINTIFF for overtime worked throughout his employment with DEFENDANT.
6 The incentive compensation paid by DEFENDANT constituted wages within the meaning of the
7 California Labor Code and thereby should have been part of PLAINTIFF's "regular rate of pay."
8 PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and was not
9 fully relieved of duty for his meal periods. PLAINTIFF was required to perform work as ordered
10 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
11 break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
12 from time to time in which he was required by DEFENDANT to work ten (10) hours of work.
13 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
14 accordance with DEFENDANT's corporate policy and practice. DEFENDANT also provided
15 PLAINTIFF with a pay stub that failed to accurately display PLAINTIFF's correct net and gross
16 wages earned and all hourly rates for certain pay periods in violation of Cal. Lab. Code § 226(a).
17 To date, DEFENDANT has not fully paid PLAINTIFF the wage compensation still owed to him
18 or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
19 PLAINTIFF individually does not exceed the sum or value of \$75,000.

20 **JURISDICTION AND VENUE**

21 24. The Complaint seeks relief in excess of \$25,000.00. This Court has jurisdiction
22 over Plaintiff's and putative class members' claims for failure to pay wages for all hours worked
23 at minimum wage; failure to pay wages for all overtime hours worked; failure to pay prevailing
24 wages for all applicable hours worked; failure to pay reporting time pay; failure to authorize or
25 permit all legally required and/or compliant meal periods and/or pay meal period premium
26 wages; failure to authorize or permit all legally required and/or compliant rest periods and/or pay
27 rest period premium wages; statutory penalties for failure to timely produce requested
28 employment records; indemnification for all necessary expenditures or losses incurred by

employees in direct consequence of discharging their duties; statutory penalties for failure to timely pay earned wages during employment; statutory penalties for failure to provide accurate wage statements; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; and claims for injunctive relief and restitution under California Business and Professions Code sections 17200, *et seq.*, for the following reasons: Defendants operate throughout California; Defendants employed Plaintiff and putative class members in locations throughout California, including but not limited to Sacramento County

THE CALIFORNIA CLASS

25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Fed. R. Civ. Proc. § 23(b)(2) and/or, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

27. The California Legislature has commanded that "all wages... ..earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays", and further that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC), however, is statutorily authorized to "establish exemptions from the requirement that an overtime

1 rate of compensation be paid. for executive, administrative, and professional employees,
2 provided [inter alia] that the employee is primarily engaged in duties that meet the test of the
3 exemption, [and] customarily and regularly exercises discretion and independent judgment in
4 performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
5 of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for
6 exemption from the above requirements.

7 28. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
8 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law,
9 intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to
10 correctly calculate and record overtime compensation for overtime worked by PLAINTIFF and
11 the other members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the
12 benefit of this work, required employees to perform this work and permitted or suffered to permit
13 this overtime work.

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

25 30. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
26 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
27 employee for all overtime worked at the applicable rate, as required by California Labor Code §§
28 204 and 510, et seq. At no time during the CALIFORNIA CLASS PERIOD was the overtime

1 compensation for any member of the CALIFORNIA CLASS properly recalculated so as to
2 include all earnings in the overtime compensation calculation as required by California Labor
3 Code §§ 510, et seq.

4 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
5 CLASS Members is impracticable.

6 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
7 law by:

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

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

6 33. This Class Action meets the statutory prerequisites for the maintenance of a Class
7 Action as set forth in Fed. R. Civ. Proc. § 23(b)(2) and/or(3) in that:

- 8 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
9 joinder of all such persons is impracticable and the disposition of their claims as a
10 class will benefit the parties and the Court;
- 11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
12 raised in this Complaint are common to the CALIFORNIA CLASS will apply to
13 every member of the CALIFORNIA CLASS;
- 14 c. The claims of the representative PLAINTIFF are typical of the claims of each
15 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
16 of the CALIFORNIA CLASS, was subjected to the employment practices of
17 DEFENDANT and was a non-exempt employee paid on an hourly basis and paid
18 additional non-discretionary incentive wages who was subjected to the
19 DEFENDANT's practice and policy which fails to pay the correct rate of
20 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
21 CALIFORNIA CLASS and thereby underpays overtime compensation to the
22 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of
23 DEFENDANT's employment practices. PLAINTIFF and the members of the
24 CALIFORNIA CLASS were and are similarly or identically harmed by the same
25 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,
- 26 d. The representative PLAINTIFF will fairly and adequately represent and protect
27 the interest of the CALIFORNIA CLASS, and has retained counsel who are
28 competent and experienced in Class Action litigation. There are no material

1 conflicts between the claims of the representative PLAINTIFF and the members
2 of the CALIFORNIA CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
4 CALIFORNIA CLASS Members.

5 34. In addition to meeting the statutory prerequisites to a Class Action, this action is
6 properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. § 23(b)(2) and/or (3), in
7 that:

- 8 a. Without class certification and determination of declaratory, injunctive, statutory
9 and other legal questions within the class format, prosecution of separate actions
10 by individual members of the CALIFORNIA CLASS will create the risk of:
 - 11 i. Inconsistent or varying adjudications with respect to individual members
12 of the CALIFORNIA CLASS which would establish incompatible
13 standards of conduct for the parties opposing the CALIFORNIA CLASS;
14 and/or,
 - 15 ii. Adjudication with respect to individual members of the CALIFORNIA
16 CLASS which would as a practical matter be dispositive of interests of the
17 other members not party to the adjudication or substantially impair or
18 impede their ability to protect their interests.
- 19 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
20 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
21 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
22 DEFENDANT failed to pay all wages due. Including the correct overtime rate, for
23 all worked by the members of the CALIFORNIA CLASS as required by law;
 - 24 i. With respect to the First Cause of Action, the final relief on behalf of the
25 CALIFORNIA CLASS sought does not relate exclusively to restitution
26 because through this claim PLAINTIFF seeks declaratory relief holding
27 that the DEFENDANT's policy and practices constitute unfair
28 competition, along with declaratory relief, injunctive relief, and incidental

equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

- i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a

subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. § 23(b)(2) and/or (3).

35. This Court should permit this action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. § 23(b)(2) and/or (3) because:

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

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
6 respect to the CALIFORNIA CLASS as a whole;
- 7 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
8 business records of DEFENDANT; and,
- 9 i. Class treatment provides manageable judicial treatment calculated to bring a
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANT as to the members of the
12 CALIFORNIA CLASS.

13 36. DEFENDANT maintains records from which the Court can ascertain and identify
14 by job title each of DEFENDANT's employees who as have been intentionally subjected to
15 DEFENDANT's conduct as herein alleged. PLAINTIFF will seek leave to amend the Complaint
16 to include any additional job titles of similarly situated employees when they have been
17 identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
20 Eighth, Ninth, Tenth, and Eleventh causes of Action on behalf of a California sub-class, defined
21 as all members of the CALIFORNIA CLASS classified as non-exempt employees (the
22 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning on the date
23 three (3) years prior to the filing of the complaint and ending on the date as determined by the
24 Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Fed. R. Civ. Proc. §
25 23(b)(2) and/or (3). The amount in controversy for the aggregate claim of CALIFORNIA
26 LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

27 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
28 Commission ("IWC") Wage Order requirements, and the applicable provisions of California law,

1 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to
2 correctly calculate overtime compensation for the overtime worked by PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the
4 benefit of this work, required employees to perform this work and permitted or suffered to permit
5 this overtime work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS
6 Members overtime wages at the correct amount to which these employees are entitled in order to
7 unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to
8 toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
9 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

10 39. DEFENDANT maintains records from which the Court can ascertain and identify
11 by name and job title, each of DEFENDANT's employees who have been intentionally subjected
12 to DEFENDANT's conduct as herein alleged. PLAINTIFF will seek leave to amend the
13 complaint to include any additional job titles of similarly situated employees when they have
14 been identified.

15 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
16 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 19 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
20 compensation to members of the CALIFORNIA LABOR SUBCLASS in
21 violation of the California Labor Code and California regulations and the
22 applicable California Wage Order;
- 23 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
24 overtime compensation for overtime worked under the overtime pay requirements
25 of California law;
- 26 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
27 for all overtime worked PLAINTIFF and the other members of the CALIFORNIA
28 LABOR SUB-CLASS;

- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- h. Whether DEFENDANT's conduct was willful.

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

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

- a. Violating Cal. Lab. Code §§ 510, et seq., by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS

1 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
2 Lab. Code §§ 1194 and 1197;

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

7 d. Violating Cal. Lab. Code §§ 226 and 1174, by failing to keep and provide
8 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with
9 an accurate itemized statement in writing showing all accurate and applicable
10 hours worked, wages earned, overtime rates in effect during the pay period and
11 the corresponding amount of time worked at each overtime rate by the employee;

12 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
13 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred
14 in the discharge of their job duties; and,

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

21 44. This Class Action meets the statutory prerequisites for the maintenance of a Class
22 Action as set forth in Fed. R. Civ. Proc. § 23(b)(2) and/or (3), in that:

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

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

23 45. In addition to meeting the statutory prerequisites to a Class Action, this action is
24 properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. § 23(b)(2) and/or (3), in
25 that:

- 26 a. Without class certification and determination of declaratory, injunctive, statutory
27 and other legal questions within the class format, prosecution of separate actions
28

1 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
2 the risk of:

- 3 i. Inconsistent or varying adjudications with respect to individual members
4 of the CALIFORNIA LABOR SUB-CLASS which would establish
5 incompatible standards of conduct for the parties opposing the
6 CALIFORNIA LABOR SUB-CLASS; or,
- 7 ii. Adjudication with respect to individual members of the CALIFORNIA
8 LABOR SUB-CLASS which would as a practical matter be dispositive of
9 interests of the other members not party to the adjudication or
10 substantially impair or impede their ability to protect their interests.
- 11 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
12 refused to act on grounds generally applicable to the CALIFORNIA LABOR
13 SUB-CLASS, making appropriate class-wide relief with respect to the
14 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT failed to
15 pay all wages due. Including the correct overtime rate, for all overtime worked by
16 the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- 17 c. Common questions of law and fact predominate as to the members of the
18 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
19 of California Law as listed above, and predominate over any question affecting
20 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
21 Action is superior to other available methods for the fair and efficient adjudication
22 of the controversy, including consideration of:
 - 23 i. The interests of the members of the CALIFORNIA LABOR SUBCLASS
24 in individually controlling the prosecution or defense of separate actions in
25 that the substantial expense of individual actions will be avoided to
26 recover the relatively small amount of economic losses sustained by the
27 individual CALIFORNIA LABOR SUB-CLASS Members when

1 compared to the substantial expense and burden of individual prosecution
2 of this litigation;

3 ii. Class certification will obviate the need for unduly duplicative litigation
4 that would create the risk of:

5 1. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUBCLASS, which
7 would establish incompatible standards of conduct for the
8 DEFENDANT; and/or,

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

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

20 iv. A class action is superior to other available methods for the fair and
21 efficient adjudication of this litigation because class treatment will obviate
22 the need for unduly and unnecessary duplicative litigation that is likely to
23 result in the absence of certification of this action pursuant to Fed. R. Civ.
24 Proc. § 23(b)(2) and/or (3).

25 46. This Court should permit this action to be maintained as a Class Action pursuant
26 to Fed. R. Civ. Proc. § 23(b)(2) and/or (3) because:
27
28

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

LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees 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

UNFAIR COMPETITION (BUS. & PROF. CODE §§ 17200, et seq.)

(By PLAINTIFFS and the CALIFORNIA CLASS Against All Defendants)

47. 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.

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

49. 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.

50. 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 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 204 et. seq., 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, The Fair

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

5 51. By the conduct alleged herein, DEFENDANT's practices were unlawful and
6 unfair in that these practices violated 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 17203
9 of the California Business & Professions Code, including restitution of wages wrongfully
10 withheld.

11 52. 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, minimum and overtime wages for all time worked,
14 failed to accurately to record the applicable rate of all overtime worked, failed to pay reporting
15 time wages owed, failed to reimburse necessary business expenses incurred, and failed to
16 provide the required amount of overtime compensation due to a miscalculation of the overtime
17 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
18 Commission requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this
19 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
20 including restitution of wages wrongfully withheld.

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

25 54. By the conduct alleged herein, DEFENDANT's practices were also unfair and
26 deceptive in that DEFENDANT's policies, practices and procedures failed to provide mandatory
27 meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.
28

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

5 56. PLAINTIFF further demands on behalf of each CALIFORNIA CLASS member,
6 one (1) hour of pay for each workday in which an off duty paid rest period was not timely
7 provided as required by law.

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

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

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME WAGES (LAB. CODE §§ 510, et seq.)**

10 **(By PLAINTIFFS and the CALIFORNIA SUB-CLASS Against All Defendants)**

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

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

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

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

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

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

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

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

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

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

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

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

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

25 75. DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
27 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to
28 not pay employees for their labor as a matter of company policy, practice and procedure, and

1 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

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

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY MINIMUM WAGES (LAB. CODE §§ 1194, 1197 & 1197.1)**

24 **(By PLAINTIFFS and the CALIFORNIA SUB-CLASS Against All Defendants)**

25 78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
27 of this Complaint.
28

1 79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
3 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
4 calculate and pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA
5 CLASS Members.

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

8 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
9 commission is the minimum wage to be paid to employees, and the payment of a less wage than
10 the minimum so fixed is unlawful.

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

13 83. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
15 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
16 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS.

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

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

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

4 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
5 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members
6 to work without paying them for all the time they were under DEFENDANT's control. During
7 the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the
8 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to,
9 constituting a failure to pay all earned wages.

10 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
11 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
12 SUBCLASS for the true 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 according
15 to proof at trial.

16 89. DEFENDANT knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
18 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to
19 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 of
21 the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

22 90. 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 time worked and provide them with the requisite compensation, DEFENDANT acted and
25 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
27 their legal rights, or the consequences to them, and with the despicable intent of depriving them
28

1 of their property and legal rights, and otherwise causing them injury in order to increase
2 company profits at the expense of these employees.

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PAY PREVAILING WAGES (LAB. CODE §§ 1771, 1774)**

16 **(By PLAINTIFFS and the CALIFORNIA SUB-CLASS Against All Defendants)**

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

20 93. Defendants employed many of their employees, including Plaintiff, as hourly non-
21 exempt employees. Furthermore, in their regular course of business, Defendants provided
22 services to public agencies pursuant to public contracts paid for by public funds. Therefore,
23 Defendants are subject to California's Prevailing Wage Laws ("PWL") and are required to pay
24 Plaintiff's and similarly situated employees' wages at the prevailing rate for any work performed
25 on a public works project.

26 94. Pursuant to California law, employers that have entered into public contracts with
27 public agencies are required to pay their workers on public works projects the general prevailing
28 rate of wages as determined by the Director of Industrial Relations. Labor Code sections 1773;

1 1815. Generally, this requirement is applied to all work performed under contract in excess of
2 one thousand dollars (\$1,000.00) paid for, in whole or in part, out of public funds, involving
3 street, sewer, or other improvement work done under the direction and supervision or by the
4 authority of an officer or public entity of the state, or political subdivision thereof. Labor Code
5 sections 1720; 1771(a)(3). Workers entitled to prevailing wage rates include all laborers,
6 workers, or mechanics employed by contractors or subcontractors in the execution of any
7 contract for public work. Labor Code sections 1723; 1772; 1474. The PWL further requires each
8 contractor and subcontractor performing public work to keep accurate payroll records showing
9 time worked and actual per diem wages paid, and to verify in writing under penalty of perjury
10 that the information in the payroll records is true and correct, and that the employer has paid the
11 prevailing rate of per diem wages, including overtime, to all workers employed on public works.
12 Labor Code section 1776.

13 95. At all times relevant to this Complaint, Plaintiff and the Prevailing Wage Class
14 were hourly non-exempt employees of Defendants in California. At various times throughout
15 their employment, Plaintiff and the Prevailing Wage Class worked on public works projects on
16 behalf of Defendants, and therefore are covered by Labor Code sections 1720, 1771, 1772, 1773,
17 1774, 1776, and 1815.

18 96. Pursuant to California law, employers that have entered into public contracts with
19 public agencies are required to pay their workers on public works projects the general prevailing
20 rate of wages as determined by the Director of Industrial Relations. Labor Code sections 1773;
21 1815. Generally, this requirement is applied to all work performed under contract in excess of
22 one thousand dollars (\$1,000.00) paid for, in whole or in part, out of public funds, involving
23 street, sewer, or other improvement work done under the direction and supervision or by the
24 authority of an officer or public entity of the state, or political subdivision thereof. Labor Code
25 sections 1720; 1771(a)(3). Workers entitled to prevailing wage rates include all laborers,
26 workers, or mechanics employed by contractors or subcontractors in the execution of any
27 contract for public work. Labor Code sections 1723; 1772; 1474. The PWL further requires each
28 contractor and subcontractor performing public work to keep accurate payroll records showing

1 time worked and actual per diem wages paid, and to verify in writing under penalty of perjury
2 that the information in the payroll records is true and correct, and that the employer has paid the
3 prevailing rate of per diem wages, including overtime, to all workers employed on public works.
4 Labor Code section 1776.

5 97. Here, Plaintiff and the Prevailing Wage Class worked on public works projects at
6 the direction of Defendants and as a result of public contracts between Defendants and public
7 agencies. For example, Plaintiff and the Prevailing Wage Class performed public sidewalk
8 maintenance and waste removal/disposal pursuant to public contracts between Defendants and
9 local municipalities. Therefore, Plaintiff and the Prevailing Wage Class are entitled to wages
10 paid at the prevailing rate for hours during which they were subject to the control of Defendants.

11 98. Despite the clear requirements stated in the PWL, Defendants failed to pay
12 Plaintiff's and the Prevailing Wage Class members' wages at the prevailing wage rate and
13 instead paid Plaintiff and the Prevailing Wage Class at the regular and overtime hourly rates they
14 would otherwise receive for non-public works projects.

15 99. As a result of Defendants' unlawful conduct, Plaintiff and the Prevailing Wage
16 Class have suffered damages in an amount subject to proof, to the extent that they were not paid
17 at their appropriate prevailing wage rate of pay for all hours and overtime hours worked on
18 public works projects. Plaintiff and the Prevailing Wage Class are entitled to recover the full
19 amount of their unpaid prevailing wages (less any other lesser wages paid in lieu of paying
20 prevailing wages), prejudgment interest, and attorneys' fees and costs.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY REPORTING TIME PAY (LAB. CODE §§ 1194, 1197, AND 1198)**

23 **(By PLAINTIFFS and the CALIFORNIA SUB-CLASS Against All Defendants)**

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

27 101. Labor Code sections 1198, 1194, 1197 require an employer to pay "reporting time
28 pay" as established by the IWC and the Wage Orders. Wage Order 4 requires that when an

1 “employee is required to report for work and does report but is not put to work or is furnished
2 less than half said employee's usual or scheduled day's work, the employee shall be paid for half
3 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four
4 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.”
5 Wage Order 4, §5(A).

6 102. At all times relevant to this Complaint, Plaintiff and the Reporting Time Pay
7 Class were hourly non-exempt employees of Defendants in California and covered by Labor
8 Code sections 1194, 1197, 1198, and Wage Order 4.

9 103. Labor Code sections 1194 and 1197 require that an employer compensate
10 employees for “hours worked” at least at a minimum wage rate of pay as established by Wage
11 Order 4. Labor Code section 1198 provides, “the maximum hours of work and the standard
12 conditions of labor fixed by the commission shall be the maximum hours of work and the
13 standard conditions of labor for employees. The employment of any employee for longer hours
14 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
15 Section 5(A) of Wage Order 4 requires that when an “employee is required to report for work
16 and does report but is not put to work or is furnished less than half said employee's usual or
17 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but
18 in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular
19 rate of pay, which shall not be less than the minimum wage.” Wage Order 4, §5(A).

20 104. Defendants maintained a policy, practice, and/or procedure of requiring Plaintiff
21 and the Reporting Time Pay Class to be “on call” for overnight shifts at specific weekly
22 intervals. During circumstances when Defendants called Plaintiff and the Reporting Time Pay
23 Class to work these on call overnight shifts, Plaintiff and the Reporting Time Pay Class are only
24 paid wages for the time it takes for them to complete Defendants’ task. If Plaintiff and the
25 Reporting Time Pay Class completed Defendants’ task in less than half of a usual or scheduled
26 day’s work, Plaintiff and the Reporting Time Pay Class would not be paid for half the usual or
27 scheduled day’s work.
28

105. Defendants require Plaintiff and other similarly situated employees to report for work and be put to work for less than half of their usual or scheduled day's work, but Defendants did not pay Plaintiff or other similarly situated employees any reporting time pay.

106. Defendants' practice resulted in Plaintiff and all other similarly situated California hourly non-exempt employees not receiving reporting time pay when required to work less than their half their usual schedule or scheduled day's work in compliance with California law.

107. Defendants are liable to Plaintiff and the Reporting Time Pay Class for reporting time pay for each day Defendants caused them to work but were put to work for less than half of their usual or scheduled day's work.

108. Pursuant to Labor Code sections 218.5, 1194, 1197, 1198, and Wage Order 4, Plaintiff and the Reporting Time Pay Class are entitled to recover the full amount of unpaid reporting time pay, interest thereon, liquidated damages, reasonable attorney's fees and costs of suit.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS (LAB. CODE §§ 226.7 & 512)

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

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

110. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members with a second off-duty meal period from time to time in which these employees were required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUBCLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

111. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

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

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS (LAB. CODE §§ 226.7 & 512)

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

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

114. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUBCLASS

Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS AND KEEP ACCURATE PAYROLL RECORDS (LAB. CODE §§ 226 AND 1174)

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

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

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

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

12 119. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
14 statements which failed to show, among other things, the correct gross and net wages earned,
15 total hours worked, all deductions made, net wages earned, inclusive dates of the pay period, the
16 name and address of the legal entity, and all applicable hourly rates in effect. Cal. Lab. Code §
17 226 provides that every employer shall furnish each of his or her employees with an accurate
18 itemized wage statement in writing showing, among other things, gross wages earned and all
19 applicable hourly rates in effect during the pay period and the corresponding amount of time
20 worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to
21 identify the correct rates of pay and number of hours worked, including for the “Per Diem NT,”
22 “Prevailing Wage”, and “Retro Pay” items of pay, which were wage payments. Aside, from the
23 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
24 itemized wage statement that lists all the requirements under California Labor Code 226 et seq.
25 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of
26 the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code §
27 226.
28

1 120. As a matter of policy and practice, wage statements issued by Defendants to
2 Plaintiff and other members of the Wage Statement Class failed to identify the pay period start
3 date, as the wage statements only identified the “Period Ending” date. Furthermore, for
4 employees like Plaintiff who were paid on an hourly basis, the wage statements failed to identify
5 applicable hourly rates of pay for wages earned. Rather, the wage statements simply showed the
6 gross wages paid for each type of wage and the applicable hours used to calculate such wages.
7 Defendants thus violated Section 226(a) by failing to provide complete itemized wage statements
8 and owe applicable penalties to Plaintiff and other members of the Wage Statement Class.

9 121. As alleged herein Defendants also would shave off overtime hours worked by
10 Plaintiff and other members of the Unpaid Class and additionally would automatically deduct a
11 half hour of work time from Plaintiff and other members of the Unpaid Class’s worked hours
12 each workday. The wages for time shaved off or automatically deducted were not paid to
13 Plaintiff and other members of the Unpaid Class and the applicable hours worked, applicable
14 wage rates, total hours worked, gross wages earned, and net wages earned were inaccurately
15 displayed on wage statements. Defendants thus violated Section 226(a) by failing to provide
16 accurate itemized wage statements and owe applicable penalties to Plaintiff and other employees.
17 Defendants thus violated Section 226(a) by failing to provide accurate itemized wage statements
18 and owe applicable penalties to Plaintiff and other members of the Unpaid Class.

19 122. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
22 expended calculating the correct rates for the overtime worked and the amount of employment
23 taxes which were not properly paid to state and federal tax authorities. These damages are
24 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
25 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
26 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
27 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to
28

1 proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
2 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

3 123. As a result of the above-referenced violations, DEFENDANT also knowingly and
4 intentionally failed to comply with Cal. Labor Code § 1174 by failing to keep proper and
5 accurate payroll records, including, but not limited to the daily hours worked and the accurate
6 wages earned by PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-
7 CLASS.

8 **NINTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE EMPLOYEES FOR EXPENSES (LAB. CODE § 2802)**

10 **(By PLAINTIFFS and the CALIFORNIA SUB-CLASS Against All Defendants)**

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

14 125. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

18 126. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
19 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
20 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
21 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR
22 SUBCLASS members for expenses which included, but were not limited to, costs related to
23 using their personal cellular phones and other expenses on behalf of and for the benefit of
24 DEFENDANT. For example, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
25 Members were required by DEFENDANT to use their personal cellular phones in order to
26 perform work related job tasks. DEFENDANT's policy and practice was to not reimburse
27 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from
28 using their personal cellular phones for DEFENDANT within the course and scope of their

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

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

11 **TENTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE WAGES WHEN DUE (LAB. CODE §§ 201-204)**

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

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

17 129. Cal. Lab. Code § 200 provides that:

18 As used in this article:

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

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

23 130. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
24 an employee, the wages earned and unpaid at the time of discharge are due and payable
25 immediately."

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

27 If an employee not having a written contract for a definite period quits his or her
28 employment, his or her wages shall become due and payable not later than 72 hours
thereafter, unless the employee has given 72 hours previous notice of his or her intention

1 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
2 Notwithstanding any other provision of law, an employee who quits without providing a
3 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
4 designates a mailing address. The date of the mailing shall constitute the date of payment
5 for purposes of the requirement to provide payment within 72 hours of the notice of
6 quitting.

7 132. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
8 SUBCLASS Members' employment contract.

9 133. Cal. Lab. Code § 203 provides:

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

15 134. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
16 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
17 employees who actually worked overtime, as required by law.

18 135. Therefore, as provided by Cal Lab. Code § 203, on behalf of the members of the
19 CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF demands up to thirty
20 days of pay as penalty for not paying all wages due at time of termination for all employees who
21 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and
22 demands an accounting and payment of all wages due, plus interest and statutory costs as
23 allowed by law.

24 **ELEVENTH CAUSE OF ACTION**

25 **FAILURE TO PRODUCE EMPLOYMENT RECORDS (LAB. CODE §§ 226, 1198.5)**

26 **(By PLAINTIFFS and the CALIFORNIA SUB-CLASS Against All Defendants)**

27 136. An employer must afford current and former employees the right to inspect or
28 receive a copy of records pertaining to their employment, upon reasonable request to the
29 employer. Labor Code section 226(b). An employer who receives a request to inspect or receive
30 a copy of records pertaining to a current or former employee must comply with the request as
31 soon as practicable, but no later than twenty-one (21) calendar days from the date of the request.
32 Labor Code section 226(c). Additionally, every current and former employee, or his or her

1 representative, has the right to inspect and receive a copy of the personnel records that the
2 employer maintains relating to the employee's performance or to any grievance concerning the
3 employee. Labor Code section 1198.5(a). Upon written request from a current or former
4 employee or his or her representative, an employer must make the contents of those personnel
5 records available for inspection or provide a copy of the personnel records to the current or
6 former employee, or his or her representative, not later than thirty (30) calendar days from the
7 date the employer receives the written request, subject to some limited exceptions. Labor Code
8 §1198.5(b)(1). Failure to comply with these requests allows for a civil penalty seven hundred
9 fifty dollars (\$750), pursuant to Labor Code sections 1198.5(k) and 226(f).

10 137. On June 21, 2021, Plaintiff sent a written request through his counsel to
11 Defendants for his payroll records, timecards, and personnel records pursuant to Labor Code
12 sections 226 and 1198.5. However, Defendants failed to timely produce the requested
13 employment records, in violation of Labor Code sections 226 and 1198.5. Defendants have not
14 produced any of the requested employment records as of the date of this Complaint.

15 138. Plaintiff is informed and believes and thereon alleges that other similarly situated
16 employees also sent written requests for their employment records, but Defendants failed to
17 timely produce the required and requested records, in violation of Labor Code sections 226 and
18 1198.5.

19 **TWELFTH CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT (LAB. CODE §§ 2698, et seq.)**

21 **(By PLAINTIFFS as Proxies for the State Against All Defendants)**

22 139. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
23 paragraphs of this Complaint.

24 140. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit private
28 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means

1 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
2 PAGA, the California Legislature specified that "it was ... in the public interest to allow
3 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
4 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
5 arbitration.

6 141. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to all
9 individuals who are or previously were employed by DEFENDANT in California and classified
10 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of November
11 20, 2019 until a date as determined by the Court (the "PAGA PERIOD").

12 142. On or about July 28, 2020, PLAINTIFF WILLIAMS sent written notice to the
13 Labor & Workforce Development Agency ("LWDA") of specific facts and theories for
14 Defendants' violations of Sections 201-204, 226(a), 226.7, 510, 512, 558, and 1194. Plaintiff
15 simultaneously sent written notice to Defendants via certified mail. The LWDA has neither
16 responded nor indicated that it intends to investigate the allegations in the written notice.

17 143. On November 20, 2020, PLAINTIFF SMITH gave written notice by electronic
18 mail to the LWDA and by certified mail to the employer of the specific provisions of this code
19 alleged to have been violated as required by Labor Code § 2699.3. The statutory waiting period
20 for PLAINTIFF to add these allegations to the Complaint has expired.

21 144. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
23 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
24 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed to
25 pay minimum wages, (e) failed to reimburse for required expenses, and (f) failed to provide
26 wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§
27 201, 202, 203, 204 et seq., 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
28 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and

1 the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of
2 such conduct.1 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
3 Code Private Attorney General Act of 2004 as the representative of the State of California for the
4 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

10 **PRAYER FOR RELIEF**

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

13 1. On behalf of the CLASS:

- 14 a. That the Court certify the First through Eleventh Causes of Action asserted by the
15 CLASS as a class action;
- 16 b. An order temporarily, preliminarily and permanently enjoining and restraining
17 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 18 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
19 withheld from compensation due to PLAINTIFF and the other members of the
20 CLASS; and,
- 21 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
22 restitution of the sums incidental to DEFENDANT's violations due to
23 PLAINTIFF and to the other members of the CLASS.
- 24 e. Compensatory damages, according to proof at trial, including compensatory
25 damages for overtime compensation due PLAINTIFF and the other members of the
26 CLASS plus interest thereon at the statutory rate;
- 27 f. Meal and rest period compensation pursuant to California Labor Code Section
28 226.7 and the applicable IWC Wage Order;

- 1 g. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
2 which a violation occurs and one hundred dollars (\$100) per each member of the
3 CLASS for each violation in a subsequent pay period, not exceeding an aggregate
4 penalty of four thousand dollars (\$4,000), and an award of costs for violation of
5 Cal. Lab. Code § 226;
- 6 h. The amount of the expenses PLAINTIFF and each member of the CLASS incurred in
7 the course of their job duties, plus interest, and costs of suit;
- 8 i. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
9 1197;
- 10 j. The wages of all terminated employees from the CLASS as a penalty from the due
11 date thereof at the same rate until paid or until an action therefore is commenced, in
12 accordance with Cal. Lab. Code § 203; and,
- 13 k. The greater of all actual damages or one hundred dollars (\$100) for the initial pay
14 period in which a violation occurs and two hundred dollars (\$200) per each
15 member of the CLASS for each violation in a subsequent pay period, for violation
16 of Cal. Lab. Code § 204(a), in accordance with Cal. Lab. Code § 210.
- 17 2. On behalf of the State of California and with respect to all AGGRIEVED
18 EMPLOYEES:
- 19 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
20 General Act of 2004.
- 21 3. On all claims:
- 22 a. An award of interest, including prejudgment interest at the legal rate;
- 23 b. Such other and further relief as the Court deems just and equitable; and,
- 24 c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.
- 25
26
27
28

1 DATED: July 28, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE

2 BLOUW LLP

3 By: 

4 Normal B. Blumenthal

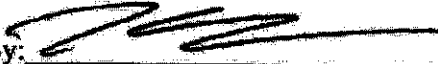
5 Kyle R. Nordrehaug

6 Aparajit Bhowmik

7 Attorneys for Plaintiff Smith and the Class

8 DATED: July 28, 2022

DIVERSITY LAW GROUP, P.C.

9 By: 

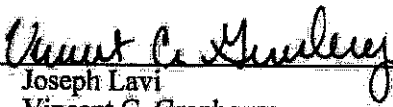
10 Larry W. Lee

11 Simon L. Yang

Attorneys for Plaintiff Williams and the Class

12 DATED: July 28, 2022

LAVI & EBRAHIMIAN, LLP

13 By: 

14 Joseph Lavi

15 Vincent C. Granberry

16 Attorneys for Plaintiff Reyes and the Class