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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

34-2021-0029729 0

ADRIAN AGUIRRE, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

HEADLANDS VENTURES, LLC, a
California Limited Liability Company; and
Does 1 through 50, Inclusive;

Defendants.

Case No. _____
CLASS ACTION COMPLAINT FOR:
1. UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §§ 17200, *et*
seq.;
2. FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CAL. LAB. CODE § 2802; ,
8. FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE
§§ 201, 202 AND 203;
9. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY; and,
10. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698, *et seq.*]
DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Headlands Ventures, LLC (“DEFENDANT”) is a California limited
7 liability company that at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout California.

9 2. DEFENDANT was founded in 1964 as one of Marin County's very first Schwinn
10 shops. DEFENDANT now owns and operates stores in Sacramento County where PLAINTIFF
11 worked for DEFENDANT.

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

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

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

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

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

25 **THE CONDUCT**

26
27 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
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1 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
2 CLASS for their minimum and overtime wages. DEFENDANT unlawfully and unilaterally
3 failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and
4 other members of the CALIFORNIA CLASS in order to avoid paying these employees the
5 correct compensation. Further, PLAINTIFF and other members of the CALIFORNIA CLASS
6 from time to time were not paid wages for all time worked, including overtime wages, such that
7 in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and
8 practice of unevenly rounding time worked by its employees. As a result, PLAINTIFF and the
9 other members of the CALIFORNIA CLASS forfeited wages due them for working without
10 compensation at the correct minimum wage and overtime rates. DEFENDANT's policy and
11 practice to not pay the members of the CALIFORNIA CLASS the correct compensation for all
12 time worked in accordance with applicable law is evidenced by DEFENDANT's business
13 records. This policy and practice of DEFENDANT was intended to purposefully avoid the
14 payment of the correct compensation as required by California law which allowed
15 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
16 with the law.

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

6 10. State and federal law provides that employees must be paid overtime at one-and-
7 one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS
8 Members were compensated at an hourly rate plus incentive pay that was tied to specific
9 elements of an employee’s performance.

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

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

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

21 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
22 CALIFORNIA CLASS Members were from time to time also required to work in excess of four
23 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
24 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
25 (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
26 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at
27 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.

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

16 15. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
17 employees with an accurate itemized wage statement in writing showing, among other things,
18 gross wages earned and all applicable hourly rates in effect during the pay period and the
19 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
20 failed to provide to PLAINTIFF and the CALIFORNIA CLASS wage statements that identify
21 the correct gross and net wages earned, the applicable number of hours worked and rates of pay.
22 Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay
23 and number of hours worked, including for the "Average," item of pay, which is a wage
24 payment. Aside, from the violations listed above in this paragraph, DEFENDANT failed to
25 issue to PLAINTIFF and other CALIFORNIA CLASS members an itemized wage statement
26 that lists all the requirements under California Labor Code 226 *et seq.*

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

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

21 18. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA
22 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
23 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by
24 engaging in a company-wide policy and procedure which failed to accurately calculate and
25 record the correct overtime rate for the overtime worked by PLAINTIFF and other
26 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour
27 rates is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of
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1 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
2 required overtime compensation for work performed by the members of the CALIFORNIA
3 CLASS and violated the California Labor Code and regulations promulgated thereunder as
4 herein alleged.

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

4 20. In or around August and September of 2020, and continuing throughout the rest
5 of PLAINTIFF's employment, PLAINTIFF engaged in protected activity by complaining to
6 DEFENDANT of DEFENDANT's illegal employment practices, including, but not limited to,
7 DEFENDANT's failure to properly follow safety precautions during the Covid-19 pandemic.

8 21. Subsequent to PLAINTIFF's participation in protective activity by complaining
9 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
10 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
11 after PLAINTIFF complained to his supervisor(s) of DEFENDANT's unlawful employment
12 practices in August and September of 2020, DEFENDANT terminated PLAINTIFF's
13 employment with DEFENDANT in October of 2020. As a result, there is a causal link between
14 the protected activity and DEFENDANT's decision to terminate his employment, which is
15 against public policy.

16 17 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

4
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

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

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

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

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

21 63. 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 64. 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 65. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
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1 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
2 Code § 1198 further states that the employment of an employee for longer hours than those
3 fixed by the Industrial Welfare Commission is unlawful.

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

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

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

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

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

5 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

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

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

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

1 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
2 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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

7
8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 97. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28

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

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

9
10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

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

20 (1) gross wages earned,

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

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

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

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

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

9
10 **SEVENTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 2802]**

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

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

18 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

22 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
23 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
24 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
25 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
26 CLASS members for expenses which included, but were not limited to, costs related to using
27 their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically,

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by
2 DEFENDANT to use their personal cellular phones in order to perform work related job tasks.
3 DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA
4 LABOR SUB-CLASS members for expenses resulting from using their personal cellular
5 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
6 These expenses were necessary to complete their principal job duties. DEFENDANT is
7 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these
8 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR
9 SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
10 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required
11 to do under the laws and regulations of California.

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

16 **EIGHTH CAUSE OF ACTION**

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

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

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

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

24 108. Cal. Lab. Code § 200 provides that:

25 As used in this article:

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

(b) "Labor" includes labor, work, or service whether rendered or performed under

1 contract, subcontract, partnership, station plan, or other agreement if the labor to
2 be paid for is performed personally by the person demanding payment.

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

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

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

16 111. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
17 CLASS Members’ employment contract.

18 112. Cal. Lab. Code § 203 provides:

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

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

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

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1 **NINTH CAUSE OF ACTION**

2 **Wrongful Termination In Violation of Public Policy**

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

4 115. PLAINTIFF realleges and incorporates by reference, as though fully set forth
5 herein, the prior paragraphs of this Complaint.

6 116. Subsequent to PLAINTIFF's participation in protective activity by complaining
7 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
8 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
9 after PLAINTIFF complained to his supervisor(s) of DEFENDANT's unlawful employment
10 practices in or around August and September of 2020, DEFENDANT terminated PLAINTIFF's
11 employment with DEFENDANT in October of 2020. As a result, there is a causal link between
12 the protected activity and DEFENDANT's decision to terminate his employment, which is
13 against public policy.

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

17 118. As a proximate result of DEFENDANT'S willful, knowing, and intentional,
18 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental
19 and physical pain and anguish, all to his damage in a sum according to proof.

20 119. As a result of DEFENDANT'S adverse employment actions against PLAINTIFF,
21 PLAINTIFF has suffered general and special damages in sums according to proof.

22 120. DEFENDANT'S misconduct was committed intentionally, in a malicious,
23 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
24 DEFENDANT.

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1 **TENTH CAUSE OF ACTION**

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

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

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

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

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

17 123. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to
20 himself and all individuals who are or previously were employed by DEFENDANT in
21 California and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES")
22 during the time period of November 13, 2019 until a date as determined by the Court (the
23 "PAGA PERIOD").

24 124. On November 13, 2020, PLAINTIFF gave written notice by electronic mail to the
25 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
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1 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
2 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
3 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

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

22
23 **PRAYER FOR RELIEF**

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

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

- 1 1. On behalf of the CALIFORNIA CLASS:
- 2 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
- 3 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) An order temporarily, preliminarily and permanently enjoining and restraining
- 5 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 6 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
- 7 withheld from compensation due to PLAINTIFF and the other members of the
- 8 CALIFORNIA CLASS; and,
- 9 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
- 10 for restitution of the sums incidental to DEFENDANT's violations due to
- 11 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 12 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 13 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
- 14 and Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as
- 15 a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 16 B) Compensatory damages, according to proof at trial, including compensatory
- 17 damages for overtime compensation due PLAINTIFF and the other members of
- 18 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
- 19 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 20 C) Meal and rest period compensation pursuant to California Labor Code Section
- 21 226.7 and the applicable IWC Wage Order;
- 22 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 23 in which a violation occurs and one hundred dollars (\$100) per each member of
- 24 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 25 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 26 an award of costs for violation of Cal. Lab. Code § 226;
- 27 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
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LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;

F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;

G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,

H) The greater of all actual damages or one hundred dollars (\$100) for the initial pay period in which a violation occurs and two hundred dollars (\$200) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, for violation of Cal. Lab. Code § 204(a), in accordance with Cal. Lab. Code § 210.

3. On behalf of PLAINTIFF for the Ninth cause of action:

A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

B) Special and General damages according to proof;

C) Statutory damages, penalties and attorney's fees;

D) For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;

E) For loss of earnings (both past and future); and,

F) For interest at the legal rate in an amount according to proof.

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

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

5. On all claims:

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

- 1 B) Such other and further relief as the Court deems just and equitable; and,
2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
3 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
4 §2802.
5

6 Dated: March 23, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

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8
9 By: 

Norman B. Blumenthal
Attorneys for Plaintiff
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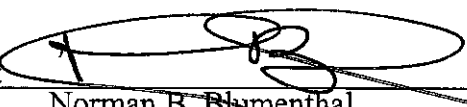
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DEMAND FOR A JURY TRIAL

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

Dated: March 23, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: 

Norman B. Blumenthal
Attorneys for Plaintiff