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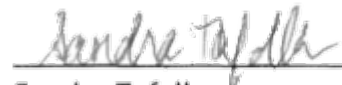
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Nocona Soboleski, Clerk of Court
Superior Court of the State of California
County of Kings

 Deputy
Sandra Tafolla

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KINGS

ANDRE SERNA, BRIAN FRANCO, and
VINCENT DUARTE, individuals, on behalf
of themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

NICHOLS PISTACHIO, a California
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. **21C-0080**

FIRST AMENDED 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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
9. VIOLATION OF GOVT. CODE §12940; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiffs Andre Serna, Brian Franco, and Vincent Duarte (“PLAINTIFFS”), individuals,
2 on behalf of themselves and all other similarly situated current and former employees, allege
3 on information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant Nicholas Pistachio (“DEFENDANT”) is a California corporation and
8 at all relevant times mentioned herein conducted and continues to conduct substantial and
9 regular business throughout California.

10 2. DEFENDANT grows, processes, packages and markets pistachios.

11 3. Plaintiff Andre Serna was employed by DEFENDANT in California from April
12 of 2016 to November of 2020 and was at all times classified by DEFENDANT as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

15 4. Plaintiff Brian Franco was employed by DEFENDANT in California from
16 December of 2016 to July of 2021 and was at all times classified by DEFENDANT as a non-
17 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
18 periods and payment of minimum and overtime wages due for all time worked.

19 5. Plaintiff Vincent Duarte was employed by DEFENDANT in California from
20 October of 2019 to October of 2021 and was at all times classified by DEFENDANT as a non-
21 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
22 periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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6 **THE CONDUCT**

7 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
8 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
9 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
10 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
11 all time worked, meaning the time during which an employee was subject to the control of an
12 employer, including all the time the employee was permitted or suffered to permit this work.
13 DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work off the
14 clock without paying them for all the time they were under DEFENDANT's control. Further,
15 PLAINTIFFS and other members of the CALIFORNIA CLASS from time to time were not paid
16 wages for all time worked, including overtime wages, such that in the aggregate employees
17 were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding
18 time worked by its employees. DEFENDANT also underpaid sick pay wages to PLAINTIFFS
19 and other CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of
20 pay. Specifically, PLAINTIFFS and other non-exempt employees regularly earn non-
21 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
22 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay
23 to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

24 11. Specifically, during the CALIFORNIA CLASS PERIOD, DEFENDANT
25 required PLAINTIFFS and other CALIFORNIA CLASS Members to wait in line and submit
26 to mandatory temperature checks for COVID-19 screening prior to entering DEFENDANT's
27 facility and prior to clocking into DEFENDANT's timekeeping system for the workday.

1 Additionally, DEFENDANT required PLAINTIFFS to work while clocked out during what
2 was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time
3 interrupted by work assignments while clocked out for what should have been PLAINTIFFS'
4 off-duty meal break. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members
5 forfeited minimum wage, overtime wage compensation, and off-duty meal breaks by working
6 without their time being correctly recorded and without compensation at the applicable rates.
7 DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS
8 Members for all time worked, is evidenced by DEFENDANT's business records.

9 12. State law provides that employees must be paid overtime and meal and rest break
10 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other
11 CALIFORNIA CLASS Members were compensated at an hourly rate plus incentive pay that
12 was tied to specific elements of an employee's performance.

13 13. The second component of PLAINTIFFS's and other CALIFORNIA CLASS
14 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
15 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
16 performance for DEFENDANT. The non-discretionary incentive program provided all
17 employees paid on an hourly basis with incentive compensation when the employees met the
18 various performance goals set by DEFENDANT. However, when calculating the regular rate
19 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members
20 and premiums for meal and rest break violations, DEFENDANT failed to include the incentive
21 compensation as part of the employees' "regular rate of pay" for purposes of calculating
22 overtime pay and premium pay for meal and rest break violations. As a matter of law, the
23 incentive compensation received by PLAINTIFFS and other CALIFORNIA CLASS Members
24 must be included in the "regular rate of pay." The failure to do so has resulted in an
25 underpayment of overtime compensation and meal and rest break premium pay to PLAINTIFFS
26 and other CALIFORNIA CLASS Members by DEFENDANT.

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

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

3 16. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
4 her employees with an accurate itemized wage statement in writing showing, among other
5 things, gross wages earned and all applicable hourly rates in effect during the pay period and
6 the corresponding amount of time worked at each hourly rate. From time to time,
7 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that
8 identified the correct gross and net wages earned. Aside from the violations listed above,
9 DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
10 requirements under California Labor Code 226 *et seq.* As a result, from time to time
11 DEFENDANT provided PLAINTIFFS and the other members of the CALIFORNIA CLASS
12 with wage statements which violated Cal. Lab. Code § 226.

13 17. Specifically as to PLAINTIFFS, DEFENDANT required PLAINTIFFS to wait
14 in line and submit to mandatory temperature checks for COVID-19 screening prior to passing
15 through DEFENDANT's security checkpoint and prior to clocking into DEFENDANT's
16 timekeeping system for the workday. As a result, PLAINTIFFS forfeited minimum wage,
17 overtime wage compensation, and off-duty meal breaks by working without their time being
18 correctly recorded and without compensation at the applicable rates. PLAINTIFFS were also
19 from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty
20 for their meal periods. PLAINTIFFS were required to perform work as ordered by
21 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
22 break. Further, DEFENDANT failed to provide PLAINTIFFS with a second off-duty meal
23 period from time to time in which he was required by DEFENDANT to work ten (10) hours of
24 work. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation
25 and in accordance with DEFENDANT's corporate policy and practice. Prior to filing this
26 action, PLAINTIFF Serna exhausted his administrative remedies by filing a timely
27 administrative complaint with the Department of Fair Employment and Housing ("DFEH") and
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1 received a DFEH right-to-sue letter on November 13, 2020.

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3 **JURISDICTION AND VENUE**

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

8 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because PLAINTIFFS worked for DEFENDANT in this County and
10 reside in this County, and DEFENDANT (i) currently maintains and at all relevant times
11 maintained offices and facilities in this County and/or conducts substantial business in this
12 County, and (ii) committed the wrongful conduct herein alleged in this County against members
13 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

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15 **THE CALIFORNIA CLASS**

16 20. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
17 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
18 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
19 all individuals who are or previously were employed by DEFENDANT in California and
20 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
21 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
22 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
23 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
24 (\$5,000,000.00).

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

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

14 23. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
15 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
16 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
17 to correctly calculate and record minimum wage, and overtime compensation for all time
18 worked by PLAINTIFFS and the other members of the CALIFORNIA CLASS, even though
19 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
20 permitted or suffered to permit this work.

21 24. DEFENDANT has the legal burden to establish that each and every
22 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
23 accurately calculate the compensation that PLAINTIFFS and members of the CALIFORNIA
24 CLASS were awarded by DEFENDANT. DEFENDANT, however, failed to have in place
25 during the CALIFORNIA CLASS PERIOD and still failed to have in place a policy or practice
26 to ensure that each and every CALIFORNIA CLASS Member was paid the applicable overtime
27 rate for all overtime worked, so as to satisfy their burden. This common business practice
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1 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
2 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
3 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

4 25. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
5 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
6 employee for all overtime worked at the applicable rate, as required by California Labor Code
7 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
8 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated
9 so as to include all earnings in the overtime compensation calculation as required by California
10 Labor Code §§ 510, *et seq.*

11 26. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
12 CLASS Members is impracticable.

13 27. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
14 law by:

- 15 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
16 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
17 place company policies, practices and procedures that failed to pay all
18 wages due the CALIFORNIA CLASS for all overtime worked, and failed
19 to accurately record the applicable rates of all overtime worked by the
20 CALIFORNIA CLASS;
- 21 (b) Committing an act of unfair competition in violation of the California
22 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
23 unlawfully, unfairly, and/or deceptively having in place a company policy,
24 practice and procedure that failed to correctly calculate overtime
25 compensation due to PLAINTIFFS and the members of the
26 CALIFORNIA CLASS;
- 27 (c) Committing an act of unfair competition in violation of the California
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Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members;

(d) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and deceptively having in place company policies, practices and procedures that denied PLAINTIFFS and the members of the CALIFORNIA CLASS the correct minimum wages and otherwise violated applicable law;

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

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

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

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

(c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, are subjected to the employment practices of DEFENDANT and is a non-exempt employee paid on an hourly basis who has been subjected to the DEFENDANT's

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

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

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

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

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

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

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

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

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

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

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

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.

30. 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

1 CLASS Members because the DEFENDANT's employment practices are
2 applied with respect to the CALIFORNIA CLASS;

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

9 (c) The members of the CALIFORNIA CLASS are so numerous that it is
10 impractical to bring all members of the CALIFORNIA CLASS before the
11 Court;

12 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
13 able to obtain effective and economic legal redress unless the action is
14 maintained as a Class Action;

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

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

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

26 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
27 the business records of DEFENDANT; and,
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1 (i) Class treatment provides manageable judicial treatment calculated to bring
2 a efficient and rapid conclusion to all litigation of all wage and hour
3 related claims arising out of the conduct of DEFENDANT as to the
4 members of the CALIFORNIA CLASS.

5 31. DEFENDANT maintains records from which the Court can ascertain and identify
6 by job title each of DEFENDANT's employees who as have been intentionally subjected to
7 DEFENDANT's conduct as herein alleged. PLAINTIFFS will seek leave to amend the
8 Complaint to include any additional job titles of similarly situated employees when they have
9 been identified.

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11 **THE CALIFORNIA LABOR SUB-CLASS**

12 32. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth and Seventh
13 causes of Action on behalf of a California sub-class, defined as all members of the
14 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
15 SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint
16 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
17 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
18 aggregate claim of CALIFORNIA LABOR SUB- CLASS Members is under five million
19 dollars (\$5,000,000.00).

20 33. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
21 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
22 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
23 to correctly calculate minimum wage and overtime compensation for the all time worked by
24 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, even
25 though DEFENDANT enjoyed the benefit of this work, required employees to perform this
26 work and permitted or suffered to permit this work. DEFENDANT denied these
27 CALIFORNIA LABOR SUB-CLASS Members wages at the correct amount to which these

1 employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the
2 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
3 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
4 accordingly.

5 34. DEFENDANT maintains records from which the Court can ascertain and identify
6 by name and job title, each of DEFENDANT's employees who have been intentionally
7 subjected to DEFENDANT's conduct as herein alleged. PLAINTIFFS will seek leave to amend
8 the complaint to include any additional job titles of similarly situated employees when they
9 have been identified.

10 35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

- 10 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 11 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
- 12 CLASS the correct overtime pay for which DEFENDANT is liable
- 13 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 14 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
- 15 accurately pay the PLAINTIFFS and the members of the CALIFORNIA
- 16 LABOR SUB-CLASS the correct minimum wage for which
- 17 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197, and
- 18 1197.1;
- 19 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
- 20 PLAINTIFFS and the other members of the CALIFORNIA LABOR
- 21 SUB-CLASS all legally required off-duty, uninterrupted thirty (30)
- 22 minute meal breaks and the legally required rest breaks;
- 23 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
- 24 the members of the CALIFORNIA LABOR SUB-CLASS with an
- 25 accurate itemized statement in writing showing all accurate and applicable
- 26 overtime rates in effect during the pay period and the corresponding
- 27 amount of time worked at each overtime rate by the employee; and,
- 28

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

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

- 9 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
10 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
11 Members is impracticable and the disposition of their claims as a class
12 will benefit the parties and the Court;
- 13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
14 that are raised in this Complaint are common to the CALIFORNIA
15 LABOR SUB-CLASS and will apply to every member of the
16 CALIFORNIA LABOR SUB-CLASS;
- 17 (c) The claims of the representative PLAINTIFFS are typical of the claims
18 of each member of the CALIFORNIA LABOR SUB-CLASS.
19 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
20 SUB-CLASS, are non-exempt employees who have been subjected to the
21 DEFENDANT's practice and policy described herein. PLAINTIFFS
22 sustained economic injury as a result of DEFENDANT's employment
23 practices. PLAINTIFFS and the members of the CALIFORNIA LABOR
24 SUB-CLASS were and are similarly or identically harmed by the same
25 unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT;
26 and,
- 27 (d) The representative PLAINTIFFS will fairly and adequately represent and
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1 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
2 retained counsel who are competent and experienced in Class Action
3 litigation. There are no material conflicts between the claims of the
4 representative PLAINTIFFS and the members of the CALIFORNIA
5 LABOR SUB-CLASS that would make class certification inappropriate.
6 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
7 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

14 1) Inconsistent or varying adjudications with respect to individual
15 members of the CALIFORNIA LABOR SUB-CLASS which
16 would establish incompatible standards of conduct for the parties
17 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

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

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

19 A. Inconsistent or varying adjudications with respect to
20 individual members of the CALIFORNIA LABOR SUB-
21 CLASS, which would establish incompatible standards of
22 conduct for the DEFENDANT; and/or,

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

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

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

- 15 (a) The questions of law and fact common to the CALIFORNIA LABOR
16 SUB-CLASS predominate over any question affecting only individual
17 CALIFORNIA LABOR SUB-CLASS Members;
18 (b) A Class Action is superior to any other available method for the fair and
19 efficient adjudication of the claims of the members of the CALIFORNIA
20 LABOR SUB-CLASS because in the context of employment litigation a
21 substantial number of individual CALIFORNIA LABOR SUB-CLASS
22 Members will avoid asserting their rights individually out of fear of
23 retaliation or adverse impact on their employment;
24 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
25 numerous that it is impractical to bring all members of the CALIFORNIA
26 LABOR SUB-CLASS before the Court;
27 (d) PLAINTIFFS , and the other CALIFORNIA LABOR SUB-CLASS
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Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

2 41. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
4 Complaint.

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

7 43. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
8 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
9 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
10 competition as follows:

11 Any person who engages, has engaged, or proposes to engage in unfair
12 competition may be enjoined in any court of competent jurisdiction. The court
13 may make such orders or judgments, including the appointment of a receiver, as
14 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.

15 Cal. Bus. & Prof. Code § 17203.

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

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

2 46. By the conduct alleged herein, DEFENDANT's practices were deceptive and
3 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFFS , and other
4 members of the CALIFORNIA CLASS, minimum wages and overtime wages due for all time
5 worked, due to business practices that cannot be justified, pursuant to the applicable Cal. Lab.
6 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
7 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
8 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

9 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
10 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
11 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
12 DEFENDANT.

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

16 49. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
18 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
19 for each workday in which a second off-duty meal period was not timely provided for each ten
20 (10) hours of work.

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

24 51. By and through the unlawful and unfair business practices described herein,
25 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
26 other members of the CALIFORNIA CLASS and has deprived them of valuable rights and
27 benefits guaranteed by law and contract, all to the detriment of these employees and to the
28

benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

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

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

SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

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

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

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

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

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

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

61. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFFS

1 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
2 correct amount of overtime worked and correct applicable overtime rate for the amount of
3 overtime they worked. As set forth herein, DEFENDANT's policy and practice was to
4 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
5 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
6 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
7 all overtime worked.

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

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

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

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

4 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
5 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
6 that they are entitled to, constituting a failure to pay all earned wages.

7 67. DEFENDANT failed to accurately pay PLAINTIFFS and the other members of
8 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they work which is in
9 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
10 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR
11 SUB-CLASS are required to work, and do in fact work, overtime as to which DEFENDANT
12 failed to accurately record and pay using the applicable overtime rate as evidenced by
13 DEFENDANT's business records and witnessed by employees.

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

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

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

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

19
20 **THIRD CAUSE OF ACTION**

21 **For Failure To Pay Minimum Wages**

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

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

24 **and Against All Defendants)**

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

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

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

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

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

77. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work, including time spent engaging in work tasks while off the clock. To the extent that these off-the-clock job tasks do not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1. As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

1 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
2 wages for their time worked.

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

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

24
25 **FOURTH CAUSE OF ACTION**

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

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

87. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules and DEFENDANT's loss prevention inspection policy, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time to time. As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

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

89. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according

1 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
2 suit.

3
4
5 **FIFTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

24 92. DEFENDANT further violated California Labor Code §§ 226.7 and the
25 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
26 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
27 the applicable Wage Order, one additional hour of compensation at each employee's regular
28

1 rate of pay for each workday that rest period was not provided.

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

6
7 **SIXTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 226]**

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

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

15 95. Cal. Labor Code § 226 provides that an employer must furnish employees with
16 an “accurate itemized” statement in writing showing:

17 (1) gross wages earned,

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

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

24 (4) all deductions, provided that all deductions made on written orders of the employee
25 may be aggregated and shown as one item,

26 (5) net wages earned,

27 (6) the inclusive dates of the period for which the employee is paid,
28

1 (7) the name of the employee and his or her social security number, except that by
2 January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown on
4 the itemized statement,

5 (8) the name and address of the legal entity that is the employer, and

6 (9) all applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked at each hourly rate by the employee.

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

18 97. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
19 Code § 226, causing injury and damages to the PLAINTIFFS and the other members of the
20 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
21 expended calculating the correct rates for the overtime worked and the amount of employment
22 taxes which were not properly paid to state and federal tax authorities. These damages are
23 difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA
24 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
25 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
26 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
27 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
28

1 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS
2 herein).

3
4 **SEVENTH CAUSE OF ACTION**

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

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

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

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

12 99. Cal. Lab. Code § 200 provides that:

13 As used in this article:

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

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

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

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

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

27 102. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
28

1 SUB-CLASS Members' employment contract.

2 103. Cal. Lab. Code § 203 provides:

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

8 104. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
9 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
10 these employees who missed meal and rest breaks, as required by law.

11 105. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
12 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
13 PLAINTIFFS demands up to thirty days of pay as penalty for not paying all wages due at time
14 of termination for all employees who terminated employment during the CALIFORNIA
15 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,
16 plus interest and statutory costs as allowed by law.

17 **EIGHTH CAUSE OF ACTION**

18 **[Disability and/or Leave Discrimination and Retaliation For the Exercise of Rights**
19 **Guaranteed Under the FEHA, Participating in Protected Activities, and/or Opposing**
20 **DEFENDANT's Failure to Provide Such Rights]**

21 **Violation of FEHA Government Section 12900, *et. seq.***

22 **(By Plaintiff Serna Against All Defendants)**

23 106. Plaintiff Serna realleges and incorporates by reference, as though fully set
24 forth herein, the prior paragraphs of this Complaint.

25 107. In August and September of 2020, Plaintiff Serna consulted with a Dr.
26 regarding health issues Plaintiff Serna had been experiencing. Leading up to Plaintiff
27 Serna's consultation with his Dr., Plaintiff Serna was plagued with ongoing sickness and
28 general discomfort and issues regarding a potential COVID-19 diagnosis. Furthermore, the

1 continuous physical stress from the nature of the work performed for DEFENDANT was
2 taking its toll on Plaintiff Serna. Plaintiff Serna adhered to the Dr.'s orders and missed
3 worked various times in August and September of 2020. In September of 2020
4 DEFENDANT terminated Plaintiff Serna in retaliation for taking leave due to his sickness.
5 This termination letter further informed Plaintiff Serna that in addition to being out of a job,
6 his health coverage under DEFENDANT's plan was also immediately terminated.

7 108. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
8 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
9 including the following bases for liability:

10 a. Taking adverse employment actions against Plaintiff Serna, including
11 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
12 otherwise discriminating against Plaintiff Serna, in whole or in part on the basis of Plaintiff
13 Serna's disability;

14 b. Retaliating against Plaintiff Serna for seeking to exercise rights
15 guaranteed under FEHA, participating in protected activities, and/or opposing
16 DEFENDANT's failure to provide such rights.

17 109. As a proximate result of DEFENDANT's willful, knowing, and intentional
18 discrimination against Plaintiff Serna, Plaintiff Serna has sustained and continues to sustain
19 substantial losses of earnings and other employment benefits.

20 110. As a proximate result of DEFENDANT's willful, knowing, and intentional
21 discrimination against Plaintiff Serna, Plaintiff Serna has suffered and continues to suffer
22 humiliation, emotional distress, and physical and mental pain and anguish, all to his damage
23 in a sum according to proof.

24 111. Plaintiff Serna has incurred and continues to incur legal expenses and
25 attorneys' fees. Pursuant to Government Code Section 12965(b), Plaintiff Serna is entitled
26 to recover reasonable attorneys' fees and costs (including expert costs) in an amount
27 according to proof.

1 112. DEFENDANT's misconduct was committed intentionally, in a malicious,
2 oppressive manner, and fraudulent manner entitling Plaintiff Serna to punitive damages
3 against DEFENDANT.

4
5 **NINTH CAUSE OF ACTION**

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

7 **(By Plaintiff Serna Against All Defendants)**

8 113. Plaintiff Serna realleges and incorporates by reference, as though fully set
9 forth herein, the prior paragraphs of this Complaint.

10 114. In August and September of 2020, Plaintiff Serna consulted with a Dr.
11 regarding health issues Plaintiff Serna had been experiencing. Leading up to Plaintiff
12 Serna's consultation with his Dr., Plaintiff Serna was plagued with ongoing sickness and
13 general discomfort and issues regarding a potential COVID-19 diagnosis. Furthermore, the
14 continuous physical stress from the nature of the work performed for DEFENDANT was
15 taking its toll on Plaintiff Serna. Plaintiff Serna adhered to the Dr.'s orders and missed
16 worked various times in August and September of 2020. In September of 2020
17 DEFENDANT terminated Plaintiff Serna in retaliation for taking leave due to his sickness.
18 This termination letter further informed Plaintiff Serna that in addition to being out of a job,
19 his health coverage under DEFENDANT's plan was also immediately terminated.

20 115. DEFENDANT terminated Plaintiff Serna's employment in violation of
21 various fundamental public policies underlying both state and federal laws. Specifically,
22 Plaintiff Serna's employment was terminated in part because of his protected status (i.e.,
23 disability, medical leave, and/or good faith complaints). These actions were in violation of
24 fundamental public policy.

25 116. As a proximate result of DEFENDANT's wrongful termination of
26 PLAINTIFFS 's employment violation of fundamental public policies, Plaintiff Serna has
27 suffered and continues to suffer humiliation, emotional distress, and physical and mental
28

1 pain and anguish, all to his damage in a sum according to proof.

2 117. As a result of DEFENDANT's wrongful termination of Plaintiff Serna's
3 employment, Plaintiff Serna has suffered general and special damages in sums according to
4 proof.

5 118. DEFENDANT's wrongful termination of Plaintiff Serna's employment was
6 done intentionally, in a malicious, fraudulent, oppressive manner entitling Plaintiff Serna to
7 punitive damages.

8 119. Plaintiff Serna has incurred and continues to incur legal expenses and
9 attorneys' fees. Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*

10 **TENTH CAUSE OF ACTION**

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

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

13 **(By PLAINTIFFS and Against All Defendants)**

14 120. PLAINTIFFS reallege and incorporates by reference, as though fully set forth
15 herein, the prior paragraphs of this Complaint.

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

26 122. PLAINTIFFS, and such persons that may be added from time to time who
27 satisfy the requirements and exhaust the administrative procedures under the Private
28

1 Attorney General Act, brings this Representative Action on behalf of the State of California
2 with respect to themselves and all individuals who are or previously were employed by
3 DEFENDANT in California and classified as non-exempt employees (the "AGGRIEVED
4 EMPLOYEES") during the time period of November 13, 2019 until a date as determined by
5 the Court (the "PAGA PERIOD").

6 123. On November 13, 2020, Plaintiff Serna gave written notice by electronic mail
7 to the Labor and Workforce Development Agency (the "Agency") and by certified mail to
8 the employer of the specific provisions of this code alleged to have been violated as required
9 by Labor Code § 2699.3. On February 28, 2022, Plaintiffs Brian Franco and Vincent Duarte
10 gave notice by electronic mail to the Agency and by certified mail to the employer of the
11 specific provisions of this code alleged to have been violated as required by Labor Code §
12 2699.3. The statutory waiting period for PLAINTIFFS to add these allegations to the
13 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now
14 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
15 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

16 124. The policies, acts and practices heretofore described were and are an unlawful
17 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
18 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
19 properly record and provide legally required meal and rest periods, (c) failed to pay
20 overtime wages, (d) failed to pay minimum wages, and (e) failed to pay wages when due, all
21 in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201,
22 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
23 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
24 and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a
25 result of such conduct.¹ PLAINTIFFS hereby seeks recovery of civil penalties as

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

1 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
2 the State of California for the illegal conduct perpetrated on PLAINTIFFS and the other
3 AGGRIEVED EMPLOYEES.

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

9 **PRAYER FOR RELIEF**

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

12 1. On behalf of the CALIFORNIA CLASS:

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

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

- 24 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh,
25 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
26 class action pursuant to Cal. Code of Civ. Proc. § 382;
27 B) Compensatory damages, according to proof at trial, including compensatory
28

1 damages for minimum wages and overtime compensation due PLAINTIFFS
2 and the other members of the CALIFORNIA LABOR SUB-CLASS, during
3 the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
4 thereon at the statutory rate;

5 C) Meal and rest period compensation pursuant to California Labor Code Section
6 226.7 and the applicable IWC Wage Order;

7 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
8 period in which a violation occurs and one hundred dollars (\$100) per each
9 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
10 subsequent pay period, not exceeding an aggregate penalty of four thousand
11 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

12 E) For liquidated damages pursuant to California Labor Code Sections 1194.2
13 and 1197;

14 F) The amount of the expenses PLAINTIFFS and each member of the
15 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
16 plus interest, and costs of suit; and,

17 G) The wages of all terminated employees from the CALIFORNIA LABOR
18 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
19 or until an action therefore is commenced, in accordance with Cal. Lab. Code
20 § 203.

21 3. On behalf of the Eighth and Ninth Causes of Action:

22 A) For all special damages which were sustained as a result of DEFENDANT's
23 conduct, including, but not limited to, back pay, front pay, lost compensation
24 and job benefits that Plaintiff Serna would have received but for the
25 retaliatory practices of DEFENDANT; and,

26 B) For all exemplary damages, according to proof, which were sustained as a
27 result of DEFENDANT's conduct.

- 1 4. On behalf of the State of California and with respect to all AGGRIEVED
2 EMPLOYEES:
3 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
4 General Act of 2004.
5 5. On all claims:
6 A) An award of interest, including prejudgment interest at the legal rate;
7 B) Such other and further relief as the Court deems just and equitable; and,
8 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
9 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
10 §2802.
11

12 Dated: June 8, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

14
15 By: 

Norman B. Blumenthal
Attorneys for PLAINTIFFS

DEMAND FOR A JURY TRIAL

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

Dated: June 8, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for PLAINTIFFS

1 **BLUMENTHAL NORDREHAUG**
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3 **2255 Calle Clara, La Jolla, CA 92037**
4 **T: (858)551-1223; F: (858) 551-1232**

Serna v. Nichols Pistachio
Kings County Superior Court
Case No. 21C-0080

5 **PROOF OF SERVICE**

6 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

7 I, Karla Horne, am employed in the County of San Diego, State of California. I am over the age
8 of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California
9 92037.

10 On June 8, 2022, I served the document(s) described as:

11 **FIRST AMENDED CLASS ACTION COMPLAINT**

12 X (BY ELECTRONIC SERVICE): Pursuant to CCP §1010.6 I provided the documents
13 referenced above electronically via electronic mail (e-mail) to counsel for Defendants at the
14 following confirmed e-mail address(es):

15 — (BY ELECTRONIC SERVICE VIA ONE LEGAL ONLY) Pursuant to CCP §1010.6,
16 the document(s) referenced above is/are served through One Legal at
17 <https://www.onelegal.com/> addressed to all parties appearing on the electronic service
18 list for the above-entitled case. The service transmission was reported as complete and
19 a copy of the One Legal Receipt Page/Confirmation will be maintained with the original
20 document(s) in this office.

21 SAGER, WATKINS & WIELAND PC
22 Paul J. Bauer, Esq.
23 Charles P. Hamamjian, Esq.
24 5260 N. Palm Avenue, Suite 400
25 Fresno, CA 93704
26 T: 559-421-7000; F: 559-473-1483

Attorneys for Defendant
Nichols Pistachio

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valerie@sw2law.com

27 I declare under penalty of perjury under the laws of the State of California that the above is
28 true and correct. Executed on June 8, 2022, at San Diego, California.



Karla Horne