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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KINGS

ANDRE SERNA, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

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

Defendants.

Case No. 21C-0080

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

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5 **THE PARTIES**

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

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

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

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

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

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

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

22 23 THE CONDUCT

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

14 9. Specifically, during the CALIFORNIA CLASS PERIOD, DEFENDANT
15 required PLAINTIFF and other CALIFORNIA CLASS Members to wait in line and submit to
16 mandatory temperature checks for COVID-19 screening prior to entering DEFENDANT's
17 facility and prior to clocking into DEFENDANT's timekeeping system for the workday.
18 Additionally, DEFENDANT required PLAINTIFF to work while clocked out during what was
19 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time
20 interrupted by work assignments while clocked out for what should have been PLAINTIFF's
21 off-duty meal break. As a result, PLAINTIFF and other CALIFORNIA CLASS Members
22 forfeited minimum wage, overtime wage compensation, and off-duty meal breaks by working
23 without their time being correctly recorded and without compensation at the applicable rates.
24 DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
25 Members for all time worked, is evidenced by DEFENDANT's business records.

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

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

1 other CALIFORNIA CLASS Members from unconstrained walks.

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

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

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JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

16. 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 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).

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

18. 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

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

12 19. 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 and record minimum wage, and overtime compensation for all time
16 worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
17 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
18 permitted or suffered to permit this work.

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

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

9 22. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
10 CLASS Members is impracticable.

11 23. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
12 law by:

13 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
14 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
15 place company policies, practices and procedures that failed to pay all
16 wages due the CALIFORNIA CLASS for all overtime worked, and failed
17 to accurately record the applicable rates of all overtime worked by the
18 CALIFORNIA CLASS;

19 (b) Committing an act of unfair competition in violation of the California
20 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
21 unlawfully, unfairly, and/or deceptively having in place a company policy,
22 practice and procedure that failed to correctly calculate overtime
23 compensation due to PLAINTIFF and the members of the CALIFORNIA
24 CLASS;

25 (c) Committing an act of unfair competition in violation of the California
26 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
27 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
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1 the CALIFORNIA CLASS members;

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

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

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

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

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

21 (c) The claims of the representative PLAINTIFF are typical of the claims of
22 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
23 other members of the CALIFORNIA CLASS, is subjected to the
24 employment practices of DEFENDANT and is a non-exempt employee
25 paid on an hourly basis who has been subjected to the DEFENDANT's
26 practice and policy described herein. PLAINTIFF sustained economic
27 injury as a result of DEFENDANT's employment practices. PLAINTIFF
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1 and the members of the CALIFORNIA 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 CLASS, and has retained
6 counsel who are competent and experienced in Class Action litigation.
7 There are no material conflicts between the claims of the representative
8 PLAINTIFF and the members of the CALIFORNIA CLASS that would
9 make class certification inappropriate. Counsel for the CALIFORNIA
10 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
11 Members.

12 25. In addition to meeting the statutory prerequisites to a Class Action, this action
13 is 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 CLASS will
17 create the risk of:

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

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

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

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

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

27 2) Class certification will obviate the need for unduly duplicative
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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.

26. 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;

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

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

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9 **THE CALIFORNIA LABOR SUB-CLASS**

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

18 29. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
19 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
20 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
21 to correctly calculate minimum wage and overtime compensation for the all time worked by
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even though
23 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
24 permitted or suffered to permit this work. DEFENDANT denied these CALIFORNIA LABOR
25 SUB-CLASS Members wages at the correct amount to which these employees are entitled in
26 order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
27 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the

1 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 11 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
12 overtime wages and minimum wages to members of the CALIFORNIA
13 LABOR SUB-CLASS in violation of the California Labor Code and
14 California regulations and the applicable California Wage Order;
- 15 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS were
16 entitled to overtime compensation for overtime worked under the overtime
17 pay requirements of California law;
- 18 (c) Whether DEFENDANT failed to accurately record the applicable
19 overtime rates for all overtime worked PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS;
- 21 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS with legally
23 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 24 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS with accurate
26 itemized wage statements;
- 27 (f) Whether DEFENDANT engaged in unfair competition by the above-listed

conduct;

(g) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,

(h) Whether DEFENDANT's conduct was willful.

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

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

(b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197, and 1197.1;

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

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

(e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to

1 tender full payment and/or restitution of wages owed or in the manner
2 required by California law to the members of the CALIFORNIA LABOR
3 SUB-CLASS who have terminated their employment.

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

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

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

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

10 1) Inconsistent or varying adjudications with respect to individual
11 members of the CALIFORNIA LABOR SUB-CLASS which
12 would establish incompatible standards of conduct for the parties
13 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

26 (c) Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28

1 violations of California Law as listed above, and predominate over any
2 question affecting only individual CALIFORNIA LABOR SUB-CLASS
3 Members, and a Class Action is superior to other available methods for
4 the fair and efficient adjudication of the controversy, including
5 consideration of:

- 6 1) The interests of the members of the CALIFORNIA LABOR SUB-
7 CLASS in individually controlling the prosecution or defense of
8 separate actions in that the substantial expense of individual
9 actions will be avoided to recover the relatively small amount of
10 economic losses sustained by the individual CALIFORNIA
11 LABOR SUB-CLASS Members when compared to the substantial
12 expense and burden of individual prosecution of this litigation;
- 13 2) Class certification will obviate the need for unduly duplicative
14 litigation that would create the risk of:
 - 15 A. Inconsistent or varying adjudications with respect to
16 individual members of the CALIFORNIA LABOR SUB-
17 CLASS, which would establish incompatible standards of
18 conduct for the DEFENDANT; and/or,
 - 19 B. Adjudications with respect to individual members of the
20 CALIFORNIA LABOR SUB-CLASS would as a practical
21 matter be dispositive of the interests of the other members
22 not parties to the adjudication or substantially impair or
23 impede their ability to protect their interests;
- 24 3) In the context of wage litigation because a substantial number of
25 individual CALIFORNIA LABOR SUB-CLASS Members will
26 avoid asserting their legal rights out of fear of retaliation by
27 DEFENDANT, which may adversely affect an individual's job

1 with DEFENDANT or with a subsequent employer, the Class
2 Action is the only means to assert their claims through a
3 representative; and,

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

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

- 11 (a) The questions of law and fact common to the CALIFORNIA LABOR
12 SUB-CLASS predominate over any question affecting only individual
13 CALIFORNIA LABOR SUB-CLASS Members;
- 14 (b) A Class Action is superior to any other available method for the fair and
15 efficient adjudication of the claims of the members of the CALIFORNIA
16 LABOR SUB-CLASS because in the context of employment litigation a
17 substantial number of individual CALIFORNIA LABOR SUB-CLASS
18 Members will avoid asserting their rights individually out of fear of
19 retaliation or adverse impact on their employment;
- 20 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
21 numerous that it is impractical to bring all members of the CALIFORNIA
22 LABOR SUB-CLASS before the Court;
- 23 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
24 Members, will not be able to obtain effective and economic legal redress
25 unless the action is maintained as a Class Action;
- 26 (e) There is a community of interest in obtaining appropriate legal and
27 equitable relief for the acts of unfair competition, statutory violations and
28

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA LABOR SUB-CLASS;

4 (f) There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of
6 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

7 (g) DEFENDANT has acted or refused to act on grounds generally applicable
8 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
9 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
10 CLASS as a whole;

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
12 ascertainable from the business records of DEFENDANT. The
13 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
14 CLASS Members classified as non-exempt employees during the
15 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

20
21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

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

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

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

3 39. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
4 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
5 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
6 competition as follows:

7 Any person who engages, has engaged, or proposes to engage in unfair
8 competition may be enjoined in any court of competent jurisdiction. The court
9 may make such orders or judgments, including the appointment of a receiver, as
10 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.

11 Cal. Bus. & Prof. Code § 17203.

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

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

25 42. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
26 fraudulent in that DEFENDANT’s policy and practice failed to pay PLAINTIFF, and other
27 members of the CALIFORNIA CLASS, minimum wages and overtime wages due for all time
28

1 worked, due to business practices that cannot be justified, pursuant to the applicable Cal. Lab.
2 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
3 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
4 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

5 43. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
6 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
7 other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

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

12 45. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
13 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
14 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
15 for each workday in which a second off-duty meal period was not timely provided for each ten
16 (10) hours of work.

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

20 47. By and through the unlawful and unfair business practices described herein,
21 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
22 other members of the CALIFORNIA CLASS and has deprived them of valuable rights and
23 benefits guaranteed by law and contract, all to the detriment of these employees and to the
24 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors
25 who comply with the law.

26 48. All the acts described herein as violations of, among other things, the Industrial
27 Welfare Commission Wage Orders, the California Code of Regulations, and the California
28

1 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
2 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
3 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

20
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Overtime Compensation**

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

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

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

1 of this Complaint.

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

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

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

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

20 57. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
21 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
22 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
23 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFF and
24 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
25 amount of overtime worked and correct applicable overtime rate for the amount of overtime
26 they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
27 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and
28

1 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact
2 failed to pay these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

26 62. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
28

1 they are entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

13
14 **THIRD CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 80. In performing the acts and practices herein alleged in violation of California
25 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
26 CLASS for all time worked and provide them with the requisite compensation,
27 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
28

1 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 with a conscious of and utter disregard for their legal rights, or the consequences to them,
3 and with the despicable intent of depriving them of their property and legal rights, and
4 otherwise causing them injury in order to increase company profits at the expense of these
5 employees.

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

18
19 **FOURTH CAUSE OF ACTION**

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

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

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

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

27 83. During the CALIFORNIA CLASS PERIOD, from time to time,

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

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

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

24 ///

25 ///

26 ///

27 ///

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

6 86. 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 87. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
10 from time to time required to work in excess of four (4) hours without being provided ten
11 (10) minute rest periods. Further, these employees were denied their first rest periods of at
12 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
13 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
14 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
15 shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR
16 SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a
17 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
18 SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT
19 and DEFENDANT's managers.

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

25 89. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
27 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
28

1 suit.

2
3 **SIXTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 226]**

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

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

11 91. Cal. Labor Code § 226 provides that an employer must furnish employees with
12 an “accurate itemized” statement in writing showing:

13 (1) gross wages earned,

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

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

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

22 (5) net wages earned,

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

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

1 (8) the name and address of the legal entity that is the employer, and
2 (9) all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

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

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

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26 ///

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

9 95. Cal. Lab. Code § 200 provides that:

10 As used in this article:

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

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

15 96. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
16 an employee, the wages earned and unpaid at the time of discharge are due and payable
17 immediately."

18 97. Cal. Lab. Code § 202 provides, in relevant part, that:

19 If an employee not having a written contract for a definite period quits his or her
20 employment, his or her wages shall become due and payable not later than 72
21 hours thereafter, unless the employee has given 72 hours previous notice of his
22 or her intention to quit, in which case the employee is entitled to his or her wages
23 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
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.

24 98. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
25 CLASS Members' employment contract.

26 99. Cal. Lab. Code § 203 provides:

27 If an employer willfully fails to pay, without abatement or reduction, in
28 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee

1 who is discharged or who quits, the wages of the employee shall continue as a
2 penalty from the due date thereof at the same rate until paid or until an action
therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

12
13 **EIGHTH CAUSE OF ACTION**

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

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

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

19 102. PLAINTIFF realleges and incorporates by reference, as though fully set forth
20 herein, the prior paragraphs of this Complaint.

21 103. In August and September of 2020, PLAINTIFF consulted with a Dr.
22 regarding health issues PLAINTIFF had been experiencing. Leading up to PLAINTIFF's
23 consultation with his Dr., PLAINTIFF was plagued with ongoing sickness and general
24 discomfort and issues regarding a potential COVID-19 diagnosis. Furthermore, the
25 continuous physical stress from the nature of the work performed for DEFENDANT was
26 taking its toll on PLAINTIFF. PLAINTIFF adhered to the Dr.'s orders and missed worked
27 various times in August and September of 2020. In September of 2020 DEFENDANT

1 terminated PLAINTIFF in retaliation for taking leave due to his sickness. This termination
2 letter further informed PLAINTIFF that in addition to being out of a job, his health coverage
3 under DEFENDANT's plan was also immediately terminated.

4 104. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
5 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
6 including the following bases for liability:

7 a. Taking adverse employment actions against PLAINTIFF, including
8 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
9 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
10 PLAINTIFF's disability;

11 b. Retaliating against PLAINTIFF for seeking to exercise rights
12 guaranteed under FEHA, participating in protected activities, and/or opposing
13 DEFENDANT's failure to provide such rights.

14 105. As a proximate result of DEFENDANT's willful, knowing, and intentional
15 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
16 substantial losses of earnings and other employment benefits.

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

21 107. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
22 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
23 reasonable attorneys' fees and costs (including expert costs) in an amount according to
24 proof.

25 108. DEFENDANT's misconduct was committed intentionally, in a malicious,
26 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
27 against DEFENDANT.

1 **NINTH CAUSE OF ACTION**

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

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

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

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

16 111. DEFENDANT terminated PLAINTIFF's employment in violation of various
17 fundamental public policies underlying both state and federal laws. Specifically,
18 PLAINTIFF's employment was terminated in part because of his protected status (i.e.,
19 disability, medical leave, and/or good faith complaints). These actions were in violation of
20 fundamental public policy.

21 112. As a proximate result of DEFENDANT's wrongful termination of
22 PLAINTIFF's employment violation of fundamental public policies, PLAINTIFF has
23 suffered and continues to suffer humiliation, emotional distress, and physical and mental
24 pain and anguish, all to his damage in a sum according to proof.

25 113. As a result of DEFENDANT's wrongful termination of PLAINTIFF's
26 employment, PLAINTIFF has suffered general and special damages in sums according to
27 proof.

114. DEFENDANT's wrongful termination of PLAINTIFF's employment was done intentionally, in a malicious, fraudulent, oppressive manner entitling PLAINTIFF to punitive damages.

115. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*

TENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

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

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

1 the Court (the "PAGA PERIOD").

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

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

22 121. All of the conduct and violations alleged herein occurred during the
23 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
24 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
25 violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v.*

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

2 **PRAYER FOR RELIEF**

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

5 1. On behalf of the CALIFORNIA CLASS:

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

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

- 17 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh,
18 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
19 class action pursuant to Cal. Code of Civ. Proc. § 382;
20 B) Compensatory damages, according to proof at trial, including compensatory
21 damages for minimum wages and overtime compensation due PLAINTIFF
22 and the other members of the CALIFORNIA LABOR SUB-CLASS, during
23 the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
24 thereon at the statutory rate;
25 C) Meal and rest period compensation pursuant to California Labor Code Section
26 226.7 and the applicable IWC Wage Order;
27 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
28

period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

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

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

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.

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

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

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

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;

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

1 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
3 §2802.
4

5 Dated: March 18, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

7 /s/ Norman Blumenthal

8 By:

Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: March 18, 2021 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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