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ELECTRONICALLY

FILED

BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KING'S COUNTY

03/27/2024

NOCENA SOBOLESKI, CLERK OF THE COURT
JULIENNE DE SANTOS, DEPUTY



SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KINGS

ANDRE SERNA, BRIAN FRANCO,
VINCENT DUARTE, and VICTOR
NARANJO, 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**

**SECOND 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, Vincent Duarte, and Victor Naranjo
2 (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated current
3 and former employees, allege on information and belief, except for their own acts and
4 knowledge which are based on personal 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. Plaintiff Victor Naranjo was employed by DEFENDANT in California from
24 approximately May of 2014 through June of 2018 and was at all times classified by
25 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
26 required meal and rest periods and payment of minimum and overtime wages due for all time
27 worked.

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

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

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

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

THE CONDUCT

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

1 12. Specifically, during the CALIFORNIA CLASS PERIOD, DEFENDANT
2 required PLAINTIFFS and other CALIFORNIA CLASS Members to wait in line and submit
3 to mandatory temperature checks for COVID-19 screening prior to entering DEFENDANT's
4 facility and prior to clocking into DEFENDANT's timekeeping system for the workday.
5 Additionally, DEFENDANT required PLAINTIFFS to work while clocked out during what
6 was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time
7 interrupted by work assignments while clocked out for what should have been PLAINTIFFS'
8 off-duty meal break. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members
9 forfeited minimum wage, overtime wage compensation, and off-duty meal breaks by working
10 without their time being correctly recorded and without compensation at the applicable rates.
11 DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS
12 Members for all time worked, is evidenced by DEFENDANT's business records.

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

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

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

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

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

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

6 7 **JURISDICTION AND VENUE**

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

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

18 19 **THE CALIFORNIA CLASS**

20 21. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
21 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
22 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
23 all individuals who are or previously were employed by DEFENDANT in California and
24 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
25 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
26 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
27 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
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1 (\$5,000,000.00).

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

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

18 24. 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 and record minimum wage, and overtime compensation for all time
22 worked by PLAINTIFFS and the other members of the CALIFORNIA 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.

25 25. DEFENDANT has the legal burden to establish that each and every
26 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
27 accurately calculate the compensation that PLAINTIFFS and members of the CALIFORNIA
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1 CLASS were awarded by DEFENDANT. DEFENDANT, however, failed to have in place
2 during the CALIFORNIA CLASS PERIOD and still failed to have in place a policy or practice
3 to ensure that each and every CALIFORNIA CLASS Member was paid the applicable overtime
4 rate for all overtime worked, so as to satisfy their burden. This common business practice
5 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
6 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
7 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

8 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
9 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
10 employee for all overtime worked at the applicable rate, as required by California Labor Code
11 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
12 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated
13 so as to include all earnings in the overtime compensation calculation as required by California
14 Labor Code §§ 510, *et seq.*

15 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 28. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
18 law by:

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

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

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

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

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

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

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

27 (c) The claims of the representative PLAINTIFFS are typical of the claims
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1 of each member of the CALIFORNIA CLASS. PLAINTIFFS , like all the
2 other members of the CALIFORNIA CLASS, are subjected to the
3 employment practices of DEFENDANT and is a non-exempt employee
4 paid on an hourly basis who has been subjected to the DEFENDANT's
5 practice and policy described herein. PLAINTIFFS sustained economic
6 injuries as a result of DEFENDANT's employment practices.
7 PLAINTIFFS and the members of the CALIFORNIA CLASS were and
8 are similarly or identically harmed by the same unlawful, deceptive, and
9 unfair misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
4 the business records of DEFENDANT; and,

5 (i) Class treatment provides manageable judicial treatment calculated to bring
6 a efficient and rapid conclusion to all litigation of all wage and hour
7 related claims arising out of the conduct of DEFENDANT as to the
8 members of the CALIFORNIA CLASS.

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

14
15 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

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

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

- 14 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
15 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
16 CLASS the correct overtime pay for which DEFENDANT is liable
17 pursuant to Cal. Lab. Code § 1194 & § 1198;
18 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
19 accurately pay the PLAINTIFFS and the members of the CALIFORNIA
20 LABOR SUB-CLASS the correct minimum wage for which
21 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197, and
22 1197.1;
23 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
24 PLAINTIFFS and the other members of the CALIFORNIA LABOR
25 SUB-CLASS all legally required off-duty, uninterrupted thirty (30)
26 minute meal breaks and the legally required rest breaks;
27 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
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1 the members of the CALIFORNIA LABOR SUB-CLASS with an
2 accurate itemized statement in writing showing all accurate and applicable
3 overtime rates in effect during the pay period and the corresponding
4 amount of time worked at each overtime rate by the employee; and,
5 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
6 when an employee is discharged or quits from employment, the employer
7 must pay the employee all wages due without abatement, by failing to
8 tender full payment and/or restitution of wages owed or in the manner
9 required by California law to the members of the CALIFORNIA LABOR
10 SUB-CLASS who have terminated their employment.

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

- 13 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
14 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
15 Members is impracticable and the disposition of their claims as a class
16 will benefit the parties and the Court;
- 17 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
18 that are raised in this Complaint are common to the CALIFORNIA
19 LABOR SUB-CLASS and will apply to every member of the
20 CALIFORNIA LABOR SUB-CLASS;
- 21 (c) The claims of the representative PLAINTIFFS are typical of the claims
22 of each member of the CALIFORNIA LABOR SUB-CLASS.
23 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
24 SUB-CLASS, are non-exempt employees who have been subjected to the
25 DEFENDANT's practice and policy described herein. PLAINTIFFS
26 sustained economic injury as a result of DEFENDANT's employment
27 practices. PLAINTIFFS and the members of the CALIFORNIA LABOR
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1 SUB-CLASS were and are similarly or identically harmed by the same
2 unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT;
3 and,

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

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

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

18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA LABOR SUB-CLASS which
20 would establish incompatible standards of conduct for the parties
21 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **For Unlawful Business Practices**

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

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

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

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

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

15 Any person who engages, has engaged, or proposes to engage in unfair
16 competition may be enjoined in any court of competent jurisdiction. The court
17 may make such orders or judgments, including the appointment of a receiver, as
18 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.

19 Cal. Bus. & Prof. Code § 17203.

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

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

6 47. By the conduct alleged herein, DEFENDANT's practices were deceptive and
7 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFFS , and other
8 members of the CALIFORNIA CLASS, minimum wages and overtime wages due for all time
9 worked, due to business practices that cannot be justified, pursuant to the applicable Cal. Lab.
10 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
11 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
12 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

13 48. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
14 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
15 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
16 DEFENDANT.

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

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

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

1 52. By and through the unlawful and unfair business practices described herein,
2 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
3 other members of the CALIFORNIA CLASS and has deprived them of valuable rights and
4 benefits guaranteed by law and contract, all to the detriment of these employees and to the
5 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors
6 who comply with the law.

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

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

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

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

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SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

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

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

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

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

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

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

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

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

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

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

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

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

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

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

23
24 **THIRD CAUSE OF ACTION**

25 **For Failure To Pay Minimum Wages**

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

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

and Against All Defendants)

73. 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..

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.

79. DEFENDANT's unlawful wage and hour practices manifested, without

1 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
2 implementing a policy and practice that denied accurate compensation to PLAINTIFFS and
3 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
4 wage pay.

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

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

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

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

6 87. PLAINTIFFS , 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 88. During the CALIFORNIA CLASS PERIOD, from time to time,
10 DEFENDANT failed to provide all the legally required off-duty meal breaks to
11 PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS Members as required by
12 the applicable Wage Order and Labor Code. The nature of the work performed by
13 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these
14 employees from being relieved of all of their duties for the legally required off-duty meal
15 periods. As a result of their rigorous work schedules and DEFENDANT's loss prevention
16 inspection policy, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members
17 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
18 Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA
19 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
20 hour of work is evidenced by DEFENDANT's business records from time to time. As a
21 result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS
22 therefore forfeited meal breaks without additional compensation and in accordance with
23 DEFENDANT's corporate policy and practice.

24 89. 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 meal period, in accordance with
27 the applicable Wage Order, one additional hour of compensation at each employee's regular
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1 rate of pay for each workday that a meal period was not provided.

2 90. 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
8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

9
10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

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

20 (1) gross wages earned,

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

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

27 (4) all deductions, provided that all deductions made on written orders of the employee
28

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

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

21 98. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
22 Code § 226, causing injury and damages to the PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct rates for the overtime worked and the amount of employment
25 taxes which were not properly paid to state and federal tax authorities. These damages are
26 difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA
27 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
28

1 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
2 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
3 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
4 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS
5 herein).

6
7 **SEVENTH CAUSE OF ACTION**

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

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

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

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

15 100. Cal. Lab. Code § 200 provides that:

16 As used in this article:

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

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

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

24 102. Cal. Lab. Code § 202 provides, in relevant part, that:

25 If an employee not having a written contract for a definite period quits his or her
26 employment, his or her wages shall become due and payable not later than 72
27 hours thereafter, unless the employee has given 72 hours previous notice of his
28 or her intention to quit, in which case the employee is entitled to his or her wages
at the time of quitting. Notwithstanding any other provision of law, an employee
who quits without providing a 72-hour notice shall be entitled to receive payment

1 by mail if he or she so requests and designates a mailing address. The date of the
2 mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

3 103. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
4 SUB-CLASS Members' employment contract.

5 104. Cal. Lab. Code § 203 provides:

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

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

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

18
19 **EIGHTH CAUSE OF ACTION**

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

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

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

25 107. Plaintiff Serna realleges and incorporates by reference, as though fully set
26 forth herein, the prior paragraphs of this Complaint.

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

10 109. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
11 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
12 including the following bases for liability:

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

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

20 110. As a proximate result of DEFENDANT's willful, knowing, and intentional
21 discrimination against Plaintiff Serna, Plaintiff Serna has sustained and continues to sustain
22 substantial losses of earnings and other employment benefits.

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

27 112. Plaintiff Serna has incurred and continues to incur legal expenses and
28

1 attorneys' fees. Pursuant to Government Code Section 12965(b), Plaintiff Serna is entitled
2 to recover reasonable attorneys' fees and costs (including expert costs) in an amount
3 according to proof.

4 113. DEFENDANT's misconduct was committed intentionally, in a malicious,
5 oppressive manner, and fraudulent manner entitling Plaintiff Serna to punitive damages
6 against DEFENDANT.

7
8 **NINTH CAUSE OF ACTION**

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

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

11 114. Plaintiff Serna realleges and incorporates by reference, as though fully set
12 forth herein, the prior paragraphs of this Complaint.

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

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

1 117. As a proximate result of DEFENDANT's wrongful termination of
2 PLAINTIFFS 's employment violation of fundamental public policies, Plaintiff Serna has
3 suffered and continues to suffer humiliation, emotional distress, and physical and mental
4 pain and anguish, all to his damage in a sum according to proof.

5 118. As a result of DEFENDANT's wrongful termination of Plaintiff Serna's
6 employment, Plaintiff Serna has suffered general and special damages in sums according to
7 proof.

8 119. DEFENDANT's wrongful termination of Plaintiff Serna's employment was
9 done intentionally, in a malicious, fraudulent, oppressive manner entitling Plaintiff Serna to
10 punitive damages.

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

13 **TENTH CAUSE OF ACTION**

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

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

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

17 121. PLAINTIFFS reallege and incorporates by reference, as though fully set forth
18 herein, the prior paragraphs of this Complaint.

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

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

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

19 125. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
21 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
22 properly record and provide legally required meal and rest periods, (c) failed to pay
23 overtime wages, (d) failed to pay minimum wages, and (e) failed to pay wages when due, all
24 in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201,
25 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
26 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
27 and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a
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1 result of such conduct.¹ PLAINTIFFS hereby seeks recovery of civil penalties as
2 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
3 the State of California for the illegal conduct perpetrated on PLAINTIFFS and the other
4 AGGRIEVED EMPLOYEES.

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

10 **PRAYER FOR RELIEF**

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

13 1. On behalf of the CALIFORNIA CLASS:

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

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

- 25 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh,
26

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

Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum wages and overtime compensation due PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;
- D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- F) The amount of the expenses PLAINTIFFS 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 Serna would have received but for the

- 1 retaliatory practices of DEFENDANT; and,
- 2 B) For all exemplary damages, according to proof, which were sustained as a
- 3 result of DEFENDANT's conduct.
- 4 4. On behalf of the State of California and with respect to all AGGRIEVED
- 5 EMPLOYEES:
- 6 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
- 7 General Act of 2004.
- 8 5. On all claims:
- 9 A) An award of interest, including prejudgment interest at the legal rate;
- 10 B) Such other and further relief as the Court deems just and equitable; and,
- 11 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 12 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
- 13 §2802.

14

15 Dated: March 27, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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18 By: /s/Norman B. Blumenthal

19 Norman B. Blumenthal

20 Attorneys for PLAINTIFFS

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DEMAND FOR A JURY TRIAL

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

Dated: March 27, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: /s/Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for PLAINTIFFS