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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

TRACEY DEAL, an individual, on
behalf of herself and on behalf of
all persons similarly situated,

Plaintiff,

vs.

GENEX SERVICES, LLC, a
Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. **37-2021-00010974**

*(consolidated for all purposes with Case No. 37-
2021-00010977)*

**FIRST AMENDED CONSOLIDATED CLASS
ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; AND,
7. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff Tracey Deal ("PLAINTIFF"), an individual, on behalf of herself and all other
2 similarly situated current and former employees, alleges on information and belief, except her
3 own acts and knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Genex Services, LLC ("GENEX" or "DEFENDANT") is a limited
7 liability company that conducts regular and substantial business in the State of California.
8 GENEX is the nation's leading provider of integrated managed care services, focused on
9 controlling health costs and reducing disability expenses. The company focuses on 3 critical
10 areas: workers' compensation and disability management, medical cost containment, social
11 security representation. GENEX serves employer groups, insurance and managed care
12 providers, and benefit administrators. Services include workplace injury management,
13 vocational rehabilitation, catastrophic case management, medical bill auditing, and social
14 security disability claim representation. GENEX is owned by Stone Point Capital.

15 2. To successfully compete against the other comprehensive medical management
16 service providers, GENEX substantially reduced its labor costs by placing the labor burden on
17 a smaller number of employees that GENEX classified as exempt from overtime wages. The
18 goal of overtime laws includes expanding employment throughout the workforce by putting
19 financial pressure on the employer and nurturing a stout job market, as well as the important
20 public policy goal of protecting employees in a relatively weak bargaining position against the
21 unfair scheme of uncompensated overtime work. An employer's obligation to pay its
22 employees wages is more than a matter of private concern between the parties. That obligation
23 is founded on a compelling public policy judgment that employees are entitled to work a livable
24 number of hours at a livable wage. In addition, statutes and regulations that compel employers
25 to pay overtime relate to fundamental issues of social welfare worthy of protection. The
26 requirement to pay overtime wages extends beyond the benefits individual workers receive
27 because overtime wages discourage employers from concentrating work in a few overburdened
28 hands and encourage employers to instead hire additional employees. Especially in today's

1 economic climate, the importance of spreading available work to reduce unemployment cannot
2 be overestimated.

3 3. As part of their business, GENEX employs a fleet of telephonic and field case
4 managers (“Case Managers” or “CM”).

5 4. PLAINTIFF was employed by GENEX in California as a Field Case Manager
6 and a Telephonic Nurse Case Manager from June of 2000 to April 1, 2021. At all times during
7 her employment with GENEX as a CM, PLAINTIFF has been classified as a salaried employee
8 exempt from overtime pay and the legally required meal and rest breaks.

9 5. As part of their business, GENEX employs a fleet of “Case Managers.”
10 PLAINTIFF, as a CM, is engaged in the core, day-to-day business activities of GENEX. The
11 CMs engage in the finite set of non-exempt clerical tasks of reviewing client’s pre-injury and/or
12 pre-illness position, making appointments with client’s physician or therapist, listening to and
13 reviewing the physician’s or therapist’s diagnosis, obtaining prescriptions, communicating both
14 in-person and by telephone with employers, medical providers, attorneys, insurance carriers and
15 claims adjusters, applying all special instructions required by individual insurance carriers and
16 referral sources, following all pre-established and required case management plans, preparing
17 reports and other required paperwork to document all casework activities, meeting weekly
18 billing requirements, operating office machines, accessing filing cabinets, and attending staff
19 meetings, workshops and/or training programs all in strict compliance with established specific
20 procedures and protocols which governed and controlled every aspect of the work performed
21 by PLAINTIFF and other Case Managers. These standardized procedures mirror the realities
22 of the workplace evidencing a uniformity of the highly skilled clerical work performed by
23 PLAINTIFF and other Case Managers and negate any exercise of independent judgment and
24 discretion as to any matter of significance and negate any role in the participation of formulating
25 GENEX’s business policies.

26 6. PLAINTIFF and other Case Managers job duties include monitoring a recovery
27 plan controlled by a physician and a claims adjuster and do not have the power to alter that
28 course of treatment. Any advice PLAINTIFF and other Case Managers provide is on an

1 individual level, far from questions affecting management or general operations of the business.
2 Rather, PLAINTIFF and other Case Managers use their RN training to coordinate care, act as
3 intermediary between patients, adjustors, and doctors and operated in a framework in which
4 these employees do not exercise ultimate decision-making power.

5 7. To perform their finite set of tasks, the CMs do not engage in a supervisory role
6 given the constraints placed upon them by company policy. CMs do not determine what work
7 is to be done by other employees or in what time frame. Furthermore, the CMs also do not have
8 a distinct role in training other employees or determining what training they are to receive.
9 Lastly, PLAINTIFF and other CMs do not have the authority to hire, fire, or promote
10 employees, determine their pay rates or benefits, or give raises as they are unable to make
11 employment-related, personnel decisions. Consequently, PLAINTIFF and the other CMs do
12 not have the authority to decide whether or not an employee should be disciplined for an
13 infraction. Disciplinary decisions are made by the human resources department or dictated by
14 company policies. Overall, PLAINTIFF's and other CMs recommendations are given little, if
15 any, weight on all the above issues. As a result, PLAINTIFF and the other CMs are engaged
16 in a type of work that requires no exercise of independent judgment or discretion as to any
17 matter of significance.

18 8. PLAINTIFF brings this Class Action on behalf of herself and a California class,
19 defined as all persons who are or previously were employed by DEFENDANT in California as
20 as exempt telephonic or field case managers (the "CALIFORNIA CLASS") at any time during
21 the period of March 11, 2020 to July 1, 2022 (the "CALIFORNIA CLASS PERIOD"). The
22 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
23 million dollars (\$5,000,000.00).

24 9. The work schedule for PLAINTIFF and other CALIFORNIA CLASS Members
25 is set by GENEX. PLAINTIFF and other CALIFORNIA CLASS Members work from time to
26 time in excess of eight (8) hours in a workday and/or more than forty (40) hours in any given
27 workweek.

28 10. PLAINTIFF and the other CALIFORNIA CLASS Members are not provided with

1 overtime compensation and other benefits required by law as a result of being classified as
2 "exempt" by GENEX.

3 11. As a matter of company policy, practice, and procedure, GENEX has unlawfully,
4 unfairly and/or deceptively classified every CM as exempt from overtime pay and other related
5 benefits, fails to pay the required overtime compensation and otherwise fails to comply with all
6 applicable labor laws with respect to these CMs.

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

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

24 THE CONDUCT

25 14. The finite set of tasks required of the CMs as defined by DEFENDANT are
26 executed by the CMs through the performance of non-exempt labor within a defined manual
27 skill set.

28 15. Although PLAINTIFF and the other CMs spend the vast majority of their time

1 performing these non-exempt tasks, DEFENDANT instituted a blanket classification policy,
2 practice and procedure by which all of these CMs are classified as exempt from overtime
3 compensation. By reason of this exemption practice, policy and procedure applicable to
4 PLAINTIFF and the other CMs who perform these non-exempt tasks, DEFENDANT
5 committed acts of unfair competition in violation of the California Unfair Competition law, Cal.
6 Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a uniform company-wide
7 policy, practice and procedure which fails to properly classify PLAINTIFF and the other CMs
8 and thereby fails to pay them overtime wages for documented overtime worked. The proper
9 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's
10 intentional disregard of the obligation to meet this burden, DEFENDANT fails to pay all
11 required overtime compensation for work performed by the members of the CALIFORNIA
12 CLASS and violates the California Labor Code and regulations promulgated thereunder as
13 herein alleged. Further, DEFENDANT underpaid sick pay wages to PLAINTIFF and other
14 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of
15 pay. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members regularly earn non-
16 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
17 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay
18 to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay. In
19 addition, DEFENDANT failed to provide the legally required off-duty meal and rest breaks to
20 PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage
21 Order and Labor Code. DEFENDANT does not have a policy or practice which provides meal
22 and rest breaks to PLAINTIFF and the other CALIFORNIA CLASS Members. As a result,
23 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
24 legally required meal and rest breaks is evidenced by DEFENDANT's business records which
25 contains no record of these breaks.

26 16. DEFENDANT, as a matter of law, has the burden of proving that (a) employees
27 are properly classified as exempt and that (b) DEFENDANT otherwise complies with applicable
28 laws.

1 17. During their employment with DEFENDANT, PLAINTIFF and the other
2 CALIFORNIA CLASS Members, perform non-managerial, non-exempt tasks, but are
3 nevertheless classified by DEFENDANT as exempt from overtime pay and work more than
4 eight (8) hours in a workday and/or more than forty (40) hours in a workweek.

5 18. A crucial requirement to be properly classified as exempt under both the
6 California Professional and Administrative exemptions is the ability to exercise independent
7 discretion and judgment as to matters of significance. PLAINTIFF and the other Case
8 Managers are assigned cases involving injured workers and chronically ill patients and are
9 micro-managed in every aspect of managing their assigned cases. These employees do not
10 exercise discretion in the sense of making important decisions of significance to the employer's
11 business even though they exercise some measure of discretion and judgment as to the manner
12 in which they performed their tasks. PLAINTIFF and other Case Managers perform routine
13 clerical tasks and followed set guidelines that were mandated and authorized by DEFENDANT.

14 19. Given the circumstances of the job functions performed by PLAINTIFF and the
15 others similarly situated, PLAINTIFF and the others similarly situated are hired as registered
16 nurses for Case Manager positions since their nursing experience is useful for reviewing
17 medical data, but they do not provide "traditional" direct medical services to injured workers
18 or chronically ill patients, render an opinion or make any medical diagnosis (which is prohibited
19 by state law). PLAINTIFF and others similarly situated do not primarily perform office or non-
20 manual staff functions directly related to policymaking and/or the general operation of the
21 DEFENDANT. The work of PLAINTIFF and the others similarly situated do not require the
22 use of "traditional" nursing skills, training, experience and/or knowledge. Instead, PLAINTIFF
23 and the others similarly situated all serve as Case Managers whose primary job duty was and
24 is to perform day-to-day routine clerical work in the management of medical conditions of
25 injured workers and/or chronically ill patients. Courts and State Labor Boards have held that
26 registered nurses, like PLAINTIFF and the others similarly situated, who were not expected to
27 utilize "traditional" nursing skills and instead rely on company manuals to perform
28 administrative services, or who do not need a nursing degree or license to qualify for

1 employment, do not exercise discretion and independent judgment as to matters of significance,
2 and therefore, are non-exempt employees entitled to overtime compensation.

3 20. PLAINTIFF and the other Case Managers employed by DEFENDANT are also
4 not engaged in work of a type that was or now is performed at the level of the policy or
5 management of the DEFENDANT. PLAINTIFF and the other Case Managers employed by
6 DEFENDANT are also not engaged in work requiring knowledge of an advanced type in a field
7 or science or learning customarily acquired by a prolonged course of specialized intellectual
8 instruction and study, but rather their work involves the performance of routine mental, clerical,
9 and/or technical processes. California law provides two alternative avenues to Professional
10 exempt status that PLAINTIFF and other Case Managers fail to meet. To be exempt from
11 overtime pay and minimum wage requirements under the California exemption for
12 “professional” employees, the employees must either be licensed by the State of California and
13 “primarily engaged” in an enumerated profession, or “primarily engaged in an occupation
14 commonly recognized as a learned or artistic profession.” 8 California Code of Regulations §
15 11010 *et seq.* PLAINTIFF and other Case Managers are not required to be certified by the State
16 of California to perform the finite set of tasks engaged in by Case Managers and/or do not
17 primarily engage in the recognized profession of law, medicine, dentistry, optometry,
18 architecture, engineering, teaching, or accounting. The federal regulations after which the
19 California learned professional exemption was explicitly patterned condition the learned
20 professions exemption upon completion of an advanced course of education. Case Managers
21 do not qualify as exempt learned professionals because an “advanced specialized academic
22 degree” is not a standard prerequisite for entry into the field. To perform the finite set of tasks
23 required of a Case Manager, PLAINTIFF and other CALIFORNIA CLASS Members are not
24 required to hold an advanced degree customarily acquired by a prolonged course of specialized
25 intellectual instruction and study, as distinguished from a general four-year baccalaureate
26 degree. Moreover, it is not sufficient that an employee have an advanced degree, but rather the
27 position the employee occupies and the work performed must actually require such a degree.
28 California Industrial Wage Order 4-2001(1)(A)(3)(b)(1). The position of a Case Manager does

1 not actually require an advanced degree. PLAINTIFF and the other Case Managers employed
2 by DEFENDANT are also not engaged in work that is intellectual and varied in character, but
3 rather is routine mental and clerical work that is of such character that the output produced or
4 the result accomplished can be standardized in relation to a given period of time. The work of
5 a Case Manager of DEFENDANT is work wherein PLAINTIFF and the members of the
6 CALIFORNIA CLASS are engaged in the day-to-day business of DEFENDANT.

7 21. CMs are classified as exempt from California overtime and related laws by
8 DEFENDANT, however, these employees do not have managerial duties or authority. CMs in
9 performing these ongoing day-to-day, non-exempt and non-managerial tasks have no role in
10 supervising employees and have no authority to make employment-related decisions relating
11 to DEFENDANT's employees. Furthermore, the CMs are tightly controlled by company policy
12 and by their supervisors, do not exercise discretion or independent judgment as to matters of
13 significance, and their tasks are not directly related to DEFENDANT's management policies
14 or general business operations.

15 22. PLAINTIFF and all members of the CALIFORNIA CLASS are uniformly
16 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
17 DEFENDANT has failed to take the proper steps to determine whether PLAINTIFF, and the
18 members of the CALIFORNIA CLASS, were properly classified under the applicable Industrial
19 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as
20 exempt from applicable California labor laws. Since DEFENDANT affirmatively and willfully
21 misclassified PLAINTIFF and the members of the CALIFORNIA CLASS in compliance with
22 California labor laws, DEFENDANT's practices violated and continue to violate California law.
23 In addition, DEFENDANT acted deceptively by falsely and fraudulently telling PLAINTIFF
24 and each member of the CALIFORNIA CLASS that they are exempt from overtime pay when
25 DEFENDANT knew or should have known that this statement is false and not based on known
26 facts. DEFENDANT also acted unfairly by violating the California labor laws, and as a result
27 of this policy and practice, DEFENDANT also violated the UCL. In doing so, DEFENDANT
28 cheated the competition by paying the CALIFORNIA CLASS less than the amount competitors

1 paid who complied with the law and cheated the CALIFORNIA CLASS by not paying them
2 in accordance with California law.

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

14 24. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
15 Members as business expenses, are required by DEFENDANT to use their own personal homes
16 offices to work remotely for DEFENDANT as a result of and in furtherance of their job duties
17 as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT for
18 the cost associated with the use of their personal home offices for DEFENDANT's benefit. As
19 a result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
20 of the CALIFORNIA CLASS incurred unreimbursed business expenses.

21 25. When PLAINTIFF and other CALIFORNIA CLASS Members work overtime,
22 DEFENDANT also failed to provide PLAINTIFF and the other CALIFORNIA CLASS
23 Members with a wage statement in writing that accurately sets forth gross wages earned, all
24 applicable hourly rates in effect during the pay period and the corresponding amount of time
25 worked at each hourly rate by the PLAINTIFF and the other CALIFORNIA CLASS Members.
26 This conduct violated California Labor Code § 226. The pay stub also does not accurately
27 display anywhere PLAINTIFF's and the other CALIFORNIA CLASS Members' overtime work
28 and applicable rates of overtime pay for the pay period.

1 26. By reason of this uniform conduct applicable to PLAINTIFF and all the
2 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
3 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
4 (the "UCL"), by engaging in a company-wide policy and procedure which fails to correctly
5 classify PLAINTIFF and the CALIFORNIA CLASS of CMs as non-exempt. The proper
6 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's
7 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly
8 calculate and/or pay all required overtime compensation for work performed by the members
9 of the CALIFORNIA CLASS and violated the applicable Wage Order, the California Labor
10 Code and the regulations promulgated thereunder as herein alleged.

11 27. Specifically as to PLAINTIFF, she performs the finite set of tasks of reviewing
12 client's pre-injury and/or pre-illness position, making appointments with client's physician or
13 therapist, listening to and reviewing the physician's or therapist's diagnosis, obtaining
14 prescriptions, communicating both in-person and by telephone with employers, medical
15 providers, attorneys, insurance carriers and claims adjusters, applying all special instructions
16 required by individual insurance carriers and referral sources, following all pre-established and
17 required case management plans, preparing reports and other required paperwork to document
18 all casework activities, meeting weekly billing requirements, operating office machines,
19 accessing filing cabinets, and attending staff meetings, workshops and/or training programs.
20 All of these tasks were performed in strict compliance with established specific procedures and
21 protocols which governs and controls every aspect of the work performed by PLAINTIFF.
22 PLAINTIFF uses the skill, training, and expertise acquired on the job to perform her job tasks,
23 and performs these job tasks in compliance with the directives given to her by other employees
24 of DEFENDANT. During the CALIFORNIA CLASS PERIOD, PLAINTIFF as a Case
25 Manager, has been classified by DEFENDANT as exempt from overtime pay and works in
26 excess of eight (8) hours in a workday and/or more than forty (40) hours in a workweek, but as
27 a result of DEFENDANT's misclassification of PLAINTIFF as exempt from the applicable
28 California Labor Code provisions, PLAINTIFF is not compensated by DEFENDANT for her

1 overtime hours worked at the applicable overtime rate. DEFENDANT does not have a policy
2 or practice which provides meal and rest breaks to PLAINTIFF and also fails to compensate
3 PLAINTIFF for her missed meal and rest breaks. As a consequence of the foregoing,
4 PLAINTIFF is not provided with accurate and itemized wage statements showing the gross
5 wages earned, the net wages earned, all applicable hourly rates in effect during the pay period,
6 including overtime hourly rates, and the corresponding number of hours worked at each hourly
7 rate, by DEFENDANT during the CALIFORNIA CLASS PERIOD in violation of Cal. Lab.
8 Code § 226(a).

9 THE CALIFORNIA CLASS

10 28. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
12 Action, pursuant to California Code of Civil Procedure Section 382, on behalf of a California
13 Class, defined as all persons who are or previously were employed by DEFENDANT in
14 California as as exempt telephonic or field case managers (the "CALIFORNIA CLASS") at any
15 time during the period of March 11, 2020 to July 1, 2022 (the "CALIFORNIA CLASS
16 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
17 Members is under five million dollars (\$5,000,000.00).

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

21 30. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
23 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
24 wilfully, engages in a practice whereby DEFENDANT unfairly, unlawfully, and deceptively
25 instituted a practice to ensure that the employees employed in a CM position are not properly
26 classified as non-exempt from the requirements of California Labor Code §§ 510, *et seq.*

27 31. DEFENDANT has the burden of proof to make sure that each and every employee
28 is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*

1 DEFENDANT, however, as a matter of policy and procedure had in place during the
2 CALIFORNIA CLASS PERIOD and still has in place a policy and practice that misclassifies
3 the CALIFORNIA CLASS Members as exempt. DEFENDANT's uniform policy and practice
4 in place at all times during the CALIFORNIA CLASS PERIOD and currently in place is to
5 classify each and every CALIFORNIA CLASS Member as exempt from the requirements of
6 the California Labor Code §§ 510, *et seq.* This common business practice applicable to each
7 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
8 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
9 (the "UCL") as causation, damages, and reliance are not elements of this claim.

10 32. At no time during PLAINTIFF's employment with DEFENDANT has any Case
11 Manager been reclassified as non-exempt from the applicable requirements of California Labor
12 Code §§ 510, *et seq.* after each CALIFORNIA CLASS Member was initially, uniformly, and
13 systematically classified as exempt upon being hired.

14 33. Any individual declarations of any employees offered at this time purporting to
15 indicate that one or more Case Managers may have been properly classified is of no force or
16 affect absent contemporaneous evidence that DEFENDANT's uniform system did not
17 misclassify PLAINTIFF and the other CALIFORNIA CLASS Members as exempt pursuant to
18 Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,
19 DEFENDANT's business practice is unlawful, unfair and/or deceptive under the UCL and may
20 be so adjudicated on a class-wide basis. As a result of the UCL violations, PLAINTIFF and the
21 CALIFORNIA CLASS Members are entitled to compel DEFENDANT to provide restitutionary
22 disgorgement of their ill-gotten gains into a fluid fund in order to restitute these funds to
23 PLAINTIFF and the CALIFORNIA CLASS Members according to proof.

24 34. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
25 CLASS Members is impracticable.

26 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
27 law by:

28 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code

§§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly misclassified PLAINTIFF and the members of the CALIFORNIA CLASS as exempt;

(b) Committing an act of unfair competition in violation of the UCL, by unlawfully, unfairly, and/or deceptively failing to have in place a company policy, practice and procedure that accurately determines the amount of working time spent by PLAINTIFF and the members of the CALIFORNIA CLASS performing non-exempt labor;

(c) Committing an act of unfair competition in violation of the UCL, by having in place a company policy, practice and procedure that fails to reclassify as non-exempt those members of the CALIFORNIA CLASS whose actual tasks were comprised of non-exempt job functions;

(d) Committing an act of unfair competition in violation of the UCL, by violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the members of the CALIFORNIA CLASS who are improperly classified as exempt, and retaining the unpaid overtime to the benefit of DEFENDANT;

(e) Committing an act of unfair competition in violation of the UCL, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members; and,

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

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

- 1 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
2 that the joinder of all such persons is impracticable and the disposition of
3 their claims as a class will benefit the parties and the Court;
- 4 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
5 raised in this Complaint are common to the CALIFORNIA CLASS will
6 apply uniformly to every member of the CALIFORNIA CLASS;
- 7 (c) The claims of the representative PLAINTIFF are typical of the claims of
8 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
9 other members of the CALIFORNIA CLASS, was initially classified as
10 exempt upon hiring based on the defined corporate policies and practices
11 and labored under DEFENDANT's procedure that fails to properly
12 classify as non-exempt PLAINTIFF and the members of the
13 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
14 result of DEFENDANT's employment practices. PLAINTIFF and the
15 members of the CALIFORNIA CLASS were and are similarly or
16 identically harmed by the same unlawful, deceptive, unfair and pervasive
17 pattern of misconduct engaged in by DEFENDANT by deceptively
18 advising all Case Managers that they were exempt from overtime wages
19 based on the defined corporate policies and practices, and unfairly failing
20 to pay overtime to these employees who were improperly classified as
21 exempt; and,
- 22 (d) The representative PLAINTIFF will fairly and adequately represent and
23 protect the interest of the CALIFORNIA CLASS, and has retained counsel
24 who are competent and experienced in Class Action litigation. There are
25 no material conflicts between the claims of the representative PLAINTIFF
26 and the members of the CALIFORNIA CLASS that would make class
27 certification inappropriate. Counsel for the CALIFORNIA CLASS will
28 vigorously assert the claims of all employees in the CALIFORNIA

1 CLASS.

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

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

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

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

17 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
18 act on grounds generally applicable to the CALIFORNIA CLASS, making
19 appropriate class-wide relief with respect to the CALIFORNIA CLASS
20 as a whole in that DEFENDANT uniformly classified and treated the Case
21 Managers as exempt and, thereafter, uniformly failed to take proper steps
22 to determine whether the Case Managers were properly classified as
23 exempt, and thereby denied these employees overtime wages as required
24 by law;

25 1) With respect to the First Cause of Action, the final relief on behalf
26 of the CALIFORNIA CLASS sought does not relate exclusively to
27 restitution because through this claim the PLAINTIFF seeks
28 declaratory relief holding that DEFENDANT's policies and

practices constitute unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct declared to constitute unfair competition;

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

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

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

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for 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 as a practical matter a

1 substantial number of individual CALIFORNIA CLASS Members
2 will avoid asserting their legal rights out of fear of retaliation by
3 DEFENDANT, which may adversely affect an individual's job
4 with DEFENDANT or with a subsequent employer, the Class
5 Action is the only means to assert their claims through a
6 representative; and,

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

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

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

maintained as a Class Action;

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

39. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

40. PLAINTIFF further brings the Second, Third, Fourth, Fifth and Sixth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who were employed by DEFENDANT in California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period of March 11, 2020 to July 1, 2022 (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to California Code of Civil Procedure § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

41. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully, and systematically misclassified the PLAINTIFF and the other members of the CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime wages and other labor laws based on DEFENDANT's comprehensive policies and procedures in order to avoid the payment of overtime wages by misclassifying their positions as exempt from overtime wages and other labor laws. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

42. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS Members have been systematically, intentionally and uniformly misclassified as exempt as a matter of DEFENDANT's corporate policies, practices and procedures. PLAINTIFF will seek leave to amend the Complaint to include these additional job titles when they have been identified.

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

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

- 1 (a) Whether DEFENDANT unlawfully fails to pay overtime compensation
2 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
3 the California Labor Code and California regulations and the applicable
4 California Wage Order;
- 5 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
6 non-exempt employees entitled to overtime compensation for overtime
7 worked under the overtime pay requirements of California law;
- 8 (c) Whether DEFENDANT's policy and practice of classifying the
9 CALIFORNIA LABOR SUB-CLASS Members as exempt from overtime
10 compensation and failing to pay the CALIFORNIA LABOR SUB-CLASS
11 Members overtime violate applicable provisions of California law;
- 12 (d) Whether DEFENDANT unlawfully fails to keep and furnish
13 CALIFORNIA LABOR SUB-CLASS Members with accurate records of
14 overtime worked; and,
- 15 (e) The proper measure of damages and penalties owed to the members of the
16 CALIFORNIA LABOR SUB-CLASS.

17 45. DEFENDANT, as a matter of corporate policy, practice and procedure,
18 erroneously classifies all Case Managers as exempt from overtime wages and other labor laws.
19 All Case Managers, including PLAINTIFF, perform the same finite set of tasks and are paid by
20 DEFENDANT according to company procedures, which, as alleged herein above, fails to
21 correctly pay overtime compensation. This business practice has been applied to each and every
22 member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this
23 conduct can be adjudicated on a class-wide basis.

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

- 26 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
27 failing to pay PLAINTIFF and the members of the CALIFORNIA
28 LABOR SUB-CLASS the correct overtime pay for a workday longer than

1 eight (8) hours and/or a workweek longer than forty (40) hours for which
2 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

3 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
4 members of the CALIFORNIA LABOR SUB-CLASS who are improperly
5 classified as exempt with an accurate itemized statement in writing
6 showing the gross wages earned, the net wages earned, all applicable
7 hourly rates in effect during the pay period and the corresponding amount
8 of time worked at each hourly rate by the employee when these employees
9 worked overtime from time to time in a pay period;

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

14 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
15 the CALIFORNIA CLASS members with necessary expenses incurred in
16 the discharge of their job duties.

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

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

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

26 (c) The claims of the representative PLAINTIFF are typical of the claims of
27 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
28 like all the other members of the CALIFORNIA LABOR SUB-CLASS,

1 was improperly classified as exempt and denied overtime pay as a result
2 of DEFENDANT's systematic classification practices. PLAINTIFF and
3 all the other members of the CALIFORNIA LABOR SUB-CLASS
4 sustained economic injuries arising from DEFENDANT's violations of the
5 laws of California; and,

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

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

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

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

- 1 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
2 or refused to act on grounds generally applicable to the CALIFORNIA
3 LABOR SUB-CLASS, making appropriate class-wide relief with respect
4 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
5 DEFENDANT uniformly classified and treated the Case Managers as
6 exempt and, thereafter, uniformly failed to take proper steps to determine
7 whether the Case Managers were properly classified as exempt, and
8 thereby denied these employees overtime wages as required by law;
- 9 (c) Common questions of law and fact predominate as to the members of the
10 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
11 violations of California law as listed above, and predominate over any
12 question affecting only individual CALIFORNIA LABOR SUB-CLASS
13 Members, and a Class Action is superior to other available methods for the
14 fair and efficient adjudication of the controversy, including consideration
15 of:
- 16 1) The interests of the members of the CALIFORNIA LABOR SUB-
17 CLASS in individually controlling the prosecution or defense of
18 separate actions in that the substantial expense of individual actions
19 will be avoided to recover the relatively small amount of economic
20 losses sustained by the individual CALIFORNIA LABOR SUB-
21 CLASS Members when compared to the substantial expense and
22 burden of individual prosecution of this litigation;
- 23 2) Class certification will obviate the need for unduly duplicative
24 litigation that would create the risk of:
- 25 A. Inconsistent or varying adjudications with respect to
26 individual members of the CALIFORNIA LABOR SUB-
27 CLASS, which would establish incompatible standards of
28 conduct for DEFENDANT; and/or,

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

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

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

18 49. This Court should permit this Action to be maintained as a Class Action pursuant
19 to Cal. Code of Civ. Proc. § 382, because:

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

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

- 1 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
2 numerous that it is impractical to bring all members of the CALIFORNIA
3 LABOR SUB-CLASS before the Court;
- 4 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
5 Members, will not be able to obtain effective and economic legal redress
6 unless the action is maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the acts of unfair competition, statutory violations and
9 other improprieties, and in obtaining adequate compensation for the
10 damages and injuries which DEFENDANT's actions have inflicted upon
11 the CALIFORNIA LABOR SUB-CLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of the
14 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 who were employed by DEFENDANT in California
23 during the 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.
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1 or personal, which may have been acquired by means of such unfair
2 competition.

3 California Business & Professions Code § 17203.

4 55. By the conduct alleged herein, DEFENDANT has engaged and continues to
5 engage in a business practice which violates California law, including but not limited to, the
6 applicable Wage Order(s), the California Code of Regulations, and the California Labor Code
7 Sections 204, 226.7, 510, 512, 1194, 1198 & 2802, and for which this Court should issue
8 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
9 necessary to prevent and remedy the conduct held to constitute unfair competition, including
10 restitution of wages wrongfully withheld.

11 56. By the conduct alleged herein, DEFENDANT's practices are unlawful and unfair
12 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous
13 or substantially injurious to employees, and are without valid justification or utility for which
14 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
15 California Business & Professions Code, including restitution of wages wrongfully withheld.

16 57. By the conduct alleged herein, DEFENDANT's practices are deceptive and
17 fraudulent in that DEFENDANT's uniform policy and practice is to represent to PLAINTIFF
18 and other CALIFORNIA CLASS Members that they are exempt from overtime pay when in
19 fact these representations are false and likely to deceive, for which this Court should issue
20 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution
21 of wages wrongfully withheld.

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

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

60. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each

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

5 61. PLAINTIFF further demands on behalf of herself and on behalf of each
6 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
7 was not timely provided as required by law.

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

14 63. All the acts described herein as violations of, among other things, the California
15 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,
16 are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and
17 unscrupulous, and are likely to deceive employees, as herein alleged, and thereby constitute
18 deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§
19 17200, *et seq.*

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

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

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

SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

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

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

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

68. Cal. Lab. Code § 510 states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

69. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

70. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to work more than six days in seven."

71. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the

1 employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

2 72. Cal. Lab. Code § 1194 states:

3 Notwithstanding any agreement to work for a lesser wage, any employee
4 receiving less than the legal minimum wage or the legal overtime compensation
5 applicable to the employee is entitled to recover in a civil action the unpaid
balance of the full amount of this minimum wage or overtime compensation,
including interest thereon, reasonable attorney's fees, and costs of suit.

6 73. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard
7 conditions of labor fixed by the commission shall be the maximum hours of work and the
8 standard conditions of labor for employees. The employment of any employee for longer hours
9 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

10 74. DEFENDANT has intentionally and uniformly designated certain employees as
11 "exempt" employees, by their job title alone and without regard to DEFENDANT's realistic
12 expectations and actual overall requirements of the job, including PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS who work on the production and non-
14 managerial side of DEFENDANT's business. This is done in an illegal attempt to avoid
15 payment of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial
16 Welfare Commission requirements.

17 75. For an employee to be exempt as a bona fide "executive," all the following criteria
18 must be met and DEFENDANT has the burden of proving that:

- 19 (a) The employee's primary duty must be management of the enterprise, or of a
20 customarily recognized department or subdivision; and,
- 21 (b) The employee must customarily and regularly direct the work of at least two (2)
22 or more other employees; and,
- 23 (c) The employee must have the authority to hire and fire, or to command
24 particularly serious attention to his or her recommendations on such actions
25 affecting other employees; and,
- 26 (d) The employee must customarily and regularly exercise discretion and
27 independent judgment; and,
- 28 (e) The employee must be primarily engaged in duties which meet the test of

1 exemption.

2 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they
3 all fail to meet the requirements of being an "executive" within the meaning of the applicable
4 Wage Order.

5 76. For an employee to be exempt as a bona fide "administrator," all of the following
6 criteria must be met and DEFENDANT has the burden of proving that:

- 7 (a) The employee must perform office or non-manual work directly related to
8 management policies or general business operation of the employer; and,
9 (b) The employee must customarily and regularly exercise discretion and
10 independent judgment; and,
11 (c) The employee must regularly and directly assist a proprietor or an exempt
12 administrator; or,
13 (d) The employee must perform, under only general supervision, work requiring
14 special training, experience, or knowledge; or,
15 (e) The employee must execute special assignments and tasks under only general
16 supervision; and,
17 (f) The employee must be primarily engaged in duties which meet the test of
18 exemption.

19 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because
20 they all fail to meet the requirements for being an "administrator" under the applicable Wage
21 Order.

22 77. The Industrial Welfare Commission, in Wage Order 4-2001, at section
23 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied
24 with to place an employee in the "professional" exempt category. For an employee to be
25 exempt as a bona fide "professional," all the following criteria must be met and DEFENDANT
26 has the burden of proving that:

- 27 (a) The employee is primarily engaged in an occupation commonly recognized as a
28 learned or artistic profession. For the purposes of this subsection, "learned or

1 artistic profession" means an employee who is primarily engaged in the
2 performance of:

- 3 1) Work requiring knowledge of an advanced type in a field or science or
4 learning customarily acquired by a prolonged course of specialized
5 intellectual instruction and study, as distinguished from a general
6 academic education and from an apprenticeship, and from training in the
7 performance of routine mental, manual, or physical processes, or work that
8 is an essential part or necessarily incident to any of the above work; or,
- 9 2) Work that is original and creative in character in a recognized field of
10 artistic endeavor, and the result of which depends primarily on the
11 invention, imagination or talent of the employee or work that is an
12 essential part of or incident to any of the above work; and,
- 13 3) Whose work is predominately intellectual and varied in character (as
14 opposed to routine mental, manual, mechanical, or physical work) and is
15 of such character cannot be standardized in relation to a given period of
16 time.

17 (b) The employee must customarily and regularly exercise discretion and
18 independent judgment; and,

19 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
20 state minimum wage for full-time employment.

21 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they
22 all fail to meet the requirements of being a "professional" within the meaning of the applicable
23 Wage Order.

24 78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
25 do not fit the definition of an exempt executive, administrative, or professional employee
26 because:

27 (a) They did not work as executives or administrators; and,

28 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other

1 members of the CALIFORNIA LABOR SUB-CLASS because they did not meet
2 all the applicable requirements to work under the professional exemption for the
3 reasons set forth above in this Complaint.

4 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF, and the
5 other members of the CALIFORNIA LABOR SUB-CLASS, work more than eight (8) hours
6 in a workday and/or more than forty (40) hours in a workweek.

7 80. DEFENDANT fails to pay PLAINTIFF, and the other members of the
8 CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they worked in
9 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and
10 1198, even though PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
11 CLASS, are required to work, and do in fact work, overtime.

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

17 82. DEFENDANT knew or should have known that PLAINTIFF, and the other
18 members of the CALIFORNIA LABOR SUB-CLASS, are misclassified as exempt and
19 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, not to pay
20 them for their overtime labor as a matter of uniform corporate policy, practice and procedure.

21 83. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR
22 SUB-CLASS, request recovery of overtime compensation according to proof, interest, costs,
23 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
24 by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation is determined
25 to be owed to members of the CALIFORNIA LABOR SUB-CLASS who have terminated their
26 employment, these employees would also be entitled to waiting time penalties under Cal. Lab.
27 Code § 203, which penalties are sought herein. Further, PLAINTIFF, and the other members
28 of the CALIFORNIA LABOR SUB-CLASS, are entitled to seek and recover statutory costs.

84. In performing the acts and practices herein alleged in violation of labor laws and refusing to provide the requisite overtime compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF, and toward the other members of the CALIFORNIA LABOR SUB-CLASS, with a conscious and utter disregard of their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights and otherwise causing them injury in order to increase corporate profits at the expense of PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS.

THIRD CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

86. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR

1 SUB-CLASS therefore forfeit meal breaks without additional compensation and in accordance
2 with DEFENDANT's strict corporate policy and practice.

3 87. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
4 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
5 CLASS Members who are not provided a meal period, in accordance with the applicable Wage
6 Order, one additional hour of compensation at each employee's regular rate of pay for each
7 workday that a meal period is not provided.

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

12
13 **FOURTH CAUSE OF ACTION**

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

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

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

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

21 90. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are
22 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
23 Further, these employees are denied their first rest periods of at least ten (10) minutes for some
24 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
25 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
26 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
27 more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not
28 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied

1 their proper rest periods by DEFENDANT and DEFENDANT's managers.

2 91. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
3 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
4 CLASS Members who are not provided a rest period, in accordance with the applicable Wage
5 Order, one additional hour of compensation at each employee's regular rate of pay for each
6 workday that rest period was not provided.

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

11
12 **FIFTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

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

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

22 (1) gross wages earned,

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

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

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

95. When PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members work overtime, DEFENDANT also failed to provide PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members with a wage statement in writing that accurately sets forth gross wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate by the PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. This conduct violated California Labor Code § 226. The pay stub also does not accurately display anywhere PLAINTIFF's and the other CALIFORNIA LABOR SUB-CLASS Members' overtime work and applicable rates of overtime pay for the pay period.

96. DEFENDANT knowingly and intentionally failed to comply with Labor Code § 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the true time worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an

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

3
4 **SIXTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 2802]**

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

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

12 98. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

16 99. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
17 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
18 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
19 benefit. Specifically, DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA
20 LABOR SUB-CLASS members for expenses which include, but are not limited to, costs related
21 to using their personal home offices all on behalf of and for the benefit of DEFENDANT.
22 DEFENDANT's policy, practice and procedure is to not reimburse PLAINTIFF and the
23 CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal
24 home offices to work remotely for DEFENDANT within the course and scope of their
25 employment for DEFENDANT. These expenses are necessary to complete their principal job
26 duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
27 expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and the
28 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT fails to indemnify and

1 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
2 expenses as an employer is required to do under the laws and regulations of California.

3 100. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
4 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
5 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
6 at the statutory rate and costs under Cal. Lab. Code § 2802.

7
8 **SEVENTH CAUSE OF ACTION**

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

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

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

12 101. PLAINTIFF incorporates by reference the allegations set forth in the prior
13 paragraphs as though fully set forth at this point.

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

24 103. PLAINTIFF, and such persons that may be added from time to time who satisfy
25 the requirements and exhaust the administrative procedures under the Private Attorney General
26 Act, brings this Representative Action on behalf of the State of California with respect to herself
27 and all individuals who are or previously were employed by DEFENDANT in California in an
28 exempt telephonic or field case manager position(the AGGRIEVED EMPLOYEES”) at any

1 point starting March 11, 2020 and ending July 1, 2022 (the "PAGA PERIOD").

2 104. On November 5, 2020, PLAINTIFF gave written notice by electronic mail to the
3 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 to
6 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 of
8 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

21 106. All of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
23 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
24 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*, 30
25 Cal.App.5th 504 (2018).

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

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 17 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of
18 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action
19 pursuant to California Code of Civil Procedure § 382;
20 B) Compensatory damages, according to proof at trial, for overtime compensation
21 due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
23 plus interest thereon at the statutory rate;
24 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
25 in which a violation occurs and one hundred dollars (\$100) per each member of
26 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
27 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
28 an award of costs for violation of Cal. Lab. Code § 226;

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

5 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
6 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
7 costs of suit.

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

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

11 4. On all claims:

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

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

14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
15 §2802.

16
17 Dated: January 11, 2023 BLUMENTHAL NORDREHAUG BHOWMIK
18 DE BLOUW LLP

19
20 By: /s/ Norman Blumenthal
21 Norman B. Blumenthal
22 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: January 11, 2023 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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