

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MEDICINAL ORGANIC LLC., a California Limited Liability Company; and Does 1 through 50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

FARHAAN HIRANI, an individual, on behalf of himself, and on behalf of all persons situated,

CLERK OF THE SUPERIOR COURT

By TANIA PIERCE Deputy

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ENDORSED
FILED
ALAMEDA COUNTY
MAR 04 2021

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Alameda Superior Court
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER: (Número del Caso):

Rg21090822

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Shani O. Zakay, Esq. (SBN: 277924)

ZAKAY LAW GROUP, APLC, 3990 Old Town Avenue, Suite C204, San Diego, CA 92110 Tel: (619) 255-9047

DATE:

(Fecha)

MAR 04, 2021

Chad Finke

Clerk, by

(Secretario)

TANIA PIERCE

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date)

VIA FAX

1 **ZAKAY LAW GROUP, APLC**
2 Shani O. Zakay (State Bar #277924)
3 3990 Old Town Avenue, Suite C204
4 San Diego, CA 92110
5 Telephone: (619)255-9047
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8 Jean-Claude Lapuyade (State Bar #248676)
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10 San Diego, CA 92110
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12 Facsimile: (619) 599-8291

13 Attorneys for Plaintiff

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF ALAMEDA**

16 FARHAAN HIRANI on behalf of herself
17 and on behalf of all persons similarly
18 situated,

19 Plaintiff,

20 v.

21 MEDICINAL ORGANIC LLC., a California
22 limited liability company; and DOES 1-50,
23 Inclusive,

24 Defendants.

ENDORSED
FILED
ALAMEDA COUNTY

MAR 04 2021

CLERK OF THE SUPERIOR COURT

By TANIA PIERCE

Case No:

R921090822

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE §§ 2698 *ET SEQ*

DEMAND FOR A JURY TRIAL

1 Plaintiff FARHAAN HIRANI, an individual, ("PLAINTIFF"), on behalf of herself and all other
2 similarly situated current and former employees, alleges on information and belief, except for
3 her own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant MEDICINAL ORGANIC LLC is a limited liability company and at all
6 relevant times mentioned herein conducted and continues to conduct substantial and regular
7 business throughout California. ("Defendant" or "Defendants")

8 2. DEFENDANT, is a cannabis delivery service serving California.

9 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
10 employee entitled to overtime pay and meal and rest periods from February of 2018 to February
11 of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as
12 a non-exempt employee paid in whole or in part on an hourly basis and received additional
13 compensation from DEFENDANT in the form of non-discretionary incentive wages..

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

21 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
22 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
23 the CALIFORNIA CLASS PERIOD caused by DEFENDANT'S uniform policy and practice
24 which failed to lawfully compensate these employees for all their time worked. DEFENDANT'S
25 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
26 whereby DEFENDANTS retained and continue to retain wages due to PLAINTIFF and the other
27 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
28 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future,
relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have

been economically injured by DEFENDANT'S past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

7. 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 PLAINTIFF 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

8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF and CALIFORNIA CLASS Members to work off the clock without paying them for all the time they were under DEFENDANT's control. Specifically, as a

1 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members
2 were from time to time not fully relieved of duty by DEFENDANT for their meal periods. As a
3 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wages and
4 overtime wage compensation by working without their time being correctly recorded and without
5 compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF
6 and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
7 business records.

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

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

26 11. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
28 matter of company policy, practice and procedure, intentionally and knowingly failed to

1 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
2 of pay for all overtime worked. This policy and practice of DEFENDANT is intended to
3 purposefully avoid the payment of the correct overtime compensation as required by California
4 law which allowed DEFENDANT to illegally profit and gain an unfair advantage over
5 competitors who complied with the law. To the extent equitable tolling operates to toll claims by
6 the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should
7 be adjusted accordingly.

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

18 13. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
19 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
20 without being provided ten (10) minute rest periods. Further, these employees were denied their
21 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
22 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
23 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
24 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
25 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to remain on the
26 premises, on-duty and on-call while carrying a communication device, and subject to
27 DEFENDANT'S control in accordance with DEFENDANT'S written policy. PLAINTIFF and
28 other CALIFORNIA CLASS Members were also not provided with one hour wages in lieu

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

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

25 15. DEFENDANT as a matter of corporate policy, practice and procedure,
26 intentionally and knowingly failed to reimburse and indemnify PLAINTIFF and the other
27 CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFF and
28 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf

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

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

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

1 18. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to
2 him in the form of two components. One component of PLAINTIFF's compensation was a base
3 hourly wage. The second component of PLAINTIFF's compensation was non-discretionary
4 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain
5 predefined performance requirements. PLAINTIFF met DEFENDANT's predefined eligibility
6 performance requirements in various pay periods throughout his employment with DEFENDANT
7 and DEFENDANT paid PLAINTIFF the incentive wages. During these pay periods in which
8 PLAINTIFF was paid the non-discretionary incentive wages by DEFENDANT, PLAINTIFF also
9 worked overtime for DEFENDANT, but DEFENDANT never included the incentive
10 compensation in PLAINTIFF's regular rate of pay for the purposes of calculating what should
11 have been PLAINTIFF's accurate overtime rate and thereby underpaid PLAINTIFF for overtime
12 worked throughout his employment with DEFENDANT. The incentive compensation paid by
13 DEFENDANT constituted wages within the meaning of the California Labor Code and thereby
14 should have been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to
15 time unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal
16 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than
17 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
18 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which he
19 was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited
20 meal and rest breaks without additional compensation and in accordance with DEFENDANT's
21 strict corporate policy and practice. DEFENDANT also provided PLAINTIFF with a pay stub
22 that failed to comply with all the requirements set forth in Cal. Lab. Code § 226(a). To date,
23 DEFENDANT has not fully paid PLAINTIFF the overtime compensation still owed to him or
24 any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
25 PLAINTIFF individually does not exceed the sum or value of \$75,000.

26 **JURISDICTION AND VENUE**

27 19. This Court has jurisdiction over this Action pursuant to California Code of Civil
28 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This

1 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
2 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

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

8 **THE CALIFORNIA CLASS**

9 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
10 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
11 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
12 individuals who are or previously were employed by DEFENDANT in California at the Hilton
13 San Francisco Union Square Hotel and classified as non-exempt employees (the "CALIFORNIA
14 CLASS") at any time during the period beginning four (4) years prior to the filing of the original
15 complaint and ending on the date as determined by the Court (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 22. 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 23. The California Legislature has commanded that "all wages... ..earned by any
22 person in any employment are due and payable twice during each calendar month, on days
23 designated in advance by the employer as the regular paydays", and further that "[a]ny work in
24 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
25 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
26 for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
27 however, is statutorily authorized to "establish exemptions from the requirement that an overtime
28 rate of compensation be paid... ..for executive, administrative, and professional employees,

1 provided [inter alia] that the employee is primarily engaged in duties that meet the test of the
2 exemption, [and] customarily and regularly exercises discretion and independent judgment in
3 performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
4 of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for
5 exemption from the above requirements.

6 24. DEFENDANT, as a matter of company policy, practice and procedure, and in
7 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
8 requirements, and the applicable provisions of California law, intentionally, knowingly, and
9 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate and record
10 minimum wage and overtime compensation for overtime worked by PLAINTIFF and the other
11 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
12 work, required employees to perform this work and permitted or suffered to permit this work.

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

23 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
24 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
25 employee for all overtime worked at the applicable rate, as required by California Labor Code §§
26 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the overtime
27 compensation for any member of the CALIFORNIA CLASS properly recalculated so as to
28

1 include all earnings in the overtime compensation calculation as required by California Labor
2 Code §§ 510, *et seq.*

3 27. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

- 7 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
8 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
9 policies, practices and procedures that failed to pay all minimum and overtime
10 wages due the CALIFORNIA CLASS for all time worked, and failed to accurately
11 record the applicable rates of all overtime worked by the CALIFORNIA CLASS
- 12 b. Committing an act of unfair competition in violation of the California Unfair
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
14 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA
15 CLASS members;
- 16 c. Committing an act of unfair competition in violation of the California Unfair
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
18 unfairly, and/or deceptively having in place a company policy, practice and
19 procedure that failed to correctly calculate overtime compensation due to
20 PLAINTIFF and the members of the CALIFORNIA CLASS; and
- 21 d. Committing an act of unfair competition in violation of the California Unfair
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
23 unfairly, and/or deceptively having in place a company policy, practice and
24 procedure that failed to correctly calculate overtime compensation due to
25 PLAINTIFF and the members of the CALIFORNIA CLASS; and
- 26 e. Committing an act of unfair competition in violation of the California Unfair
27 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
28

Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANT’S deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’S employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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

6 i. Inconsistent or varying adjudications with respect to individual members
7 of the CALIFORNIA CLASS which would establish incompatible
8 standards of conduct for the parties opposing the CALIFORNIA CLASS;
9 and/or;

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

14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
15 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
16 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
17 DEFENDANTS uniformly failed to pay all wages due for all time worked by the
18 members of the CALIFORNIA CLASS as required by law;

19 i. With respect to the First Cause of Action, the final relief on behalf of the
20 CALIFORNIA CLASS sought does not relate exclusively to restitution
21 because through this claim PLAINTIFF seeks declaratory relief holding
22 that the DEFENDANT'S policy and practices constitute unfair
23 competition, along with declaratory relief, injunctive relief, and incidental
24 equitable relief as may be necessary to prevent and remedy the conduct
25 declared to constitute unfair competition;

26 c. Common questions of law and fact exist as to the members of the CALIFORNIA
27 CLASS, with respect to the practices and violations of California law as listed
28 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:

- i. 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;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
 2. 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;
- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. 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

1 result in the absence of certification of this action pursuant to Cal. Code of
2 Civ. Proc. § 382.

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

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

1 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
2 business records of DEFENDANT; and

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

7 32. DEFENDANT maintain records from which the Court can ascertain and identify
8 by job title each of DEFENDANT'S employees who as have been systematically, intentionally
9 and uniformly subjected to DEFENDANT'S company policy, practices and procedures as herein
10 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
11 of similarly situated employees when they have been identified.

12 **THE CALIFORNIA LABOR SUB-CLASS**

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

21 34. DEFENDANT, as a matter of company 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 willfully, engaged in a practice whereby DEFENDANT failed to correctly pay for the time
25 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
26 other wages and premiums owed to these employees, even though DEFENDANT enjoyed the
27 benefit of this work, required employees to perform this work and permitted or suffered to permit
28 this overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-

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

5 35. DEFENDANT maintain records from which the Court can ascertain and identify
6 by name and job title, each of DEFENDANT'S employees who have been systematically,
7 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
8 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
9 additional job titles of similarly situated employees when they have been identified.

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

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

- 14 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
15 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
16 violation of the California Labor Code and California regulations and the
17 applicable California Wage Order;
- 18 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
19 overtime compensation for overtime worked under the overtime pay requirements
20 of California law;
- 21 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
22 for all overtime worked PLAINTIFF and the other members of the CALIFORNIA
23 LABOR SUB-CLASS;
- 24 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
25 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
26 thirty (30) minute meal breaks and rest periods;

- e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANT's conduct was willful.

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

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

- 1 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
3 statement in writing showing all accurate and applicable overtime rates in effect
4 during the pay period and the corresponding amount of time worked at each
5 overtime rate by the employee;
- 6 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
7 employee is discharged or quits from employment, the employer must pay the
8 employee all wages due without abatement, by failing to tender full payment
9 and/or restitution of wages owed or in the manner required by California law to
10 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
11 their employment; and
- 12 f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
13 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred
14 in the discharge of their job duties.

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

- 17 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
18 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
19 is impracticable and the disposition of their claims as a class will benefit the parties
20 and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
22 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
23 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
24 CLASS;
- 25 c. The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
27 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
28 employee paid on an hourly basis who was subjected to the DEFENDANT'S

1 practice and policy which failed to pay the correct amount of wages due to the
2 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
3 a result of DEFENDANT’S employment practices. PLAINTIFF and the members
4 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
5 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
6 misconduct engaged in by DEFENDANT; and

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

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

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

- 1 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
2 refused to act on grounds generally applicable to the CALIFORNIA LABOR
3 SUB-CLASS, making appropriate class-wide relief with respect to the
4 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
5 failed to pay all wages due for all time worked by the members of the
6 CALIFORNIA 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 violations
9 of California Law as listed above, and predominate over any question affecting
10 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
11 Action is superior to other available methods for the fair and efficient adjudication
12 of the controversy, including consideration of:
- 13 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
14 in individually controlling the prosecution or defense of separate actions in
15 that the substantial expense of individual actions will be avoided to recover
16 the relatively small amount of economic losses sustained by the individual
17 CALIFORNIA LABOR SUB-CLASS Members when compared to the
18 substantial expense and burden of individual prosecution of this litigation;
- 19 ii. Class certification will obviate the need for unduly duplicative litigation
20 that would create the risk of:
- 21 1. Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA LABOR SUB-CLASS, which
23 would establish incompatible standards of conduct for the
24 DEFENDANT; and/or,
- 25 2. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a practical matter
27 be dispositive of the interests of the other members not parties to
28

1 the adjudication or substantially impair or impede their ability to
2 protect their interests;

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

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

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

- 16 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
17 CLASS predominate over any question affecting only individual CALIFORNIA
18 LABOR SUB-CLASS Members;
- 19 b. A Class Action is superior to any other available method for the fair and efficient
20 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
21 CLASS because in the context of employment litigation a substantial number of
22 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
23 their rights individually out of fear of retaliation or adverse impact on their
24 employment;
- 25 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
26 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
27 before the Court;
- 28

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

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition, as
18 defined in this chapter, or as may be necessary to restore to any person in interest any
19 money or property, real or personal, which may have been acquired by means of such
20 unfair competition. (Cal. Bus. & Prof. Code § 17203).

21 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 226.3, 226.7,
25 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 for
26 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof.
27 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
28 competition, including restitution of wages wrongfully withheld.

47. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
in that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous
or substantially injurious to employees, and were without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

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

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

16 50. By the conduct alleged herein, DEFENDANT'S practices were also unfair and
17 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

27 53. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
2 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

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

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

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

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SECOND CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGES
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
Defendants)**

58. 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.

59. PLAINTIFF 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 PLAINTIFF and CALIFORNIA CLASS Members.

60. 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.

61. 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 wage less than the minimum so fixed is unlawful.

62. 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.

63. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

64. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

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

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

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

25 70. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with requisite compensation, DEFENDANTS acted and continue
28 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
or the consequences to them, and with the despicable intent of depriving them of their property

1 and legal rights, and otherwise causing them injury in order to increase company profits at the
2 expense of these employees.

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

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION** 16 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

17 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
18 **Defendants)**

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

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

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

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

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

11 77. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
14 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
15 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
17 to pay these employees the correct applicable overtime wages for all overtime worked.

18 78. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
20 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
21 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
22 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
23 in any workweek.

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

1 80. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
3 full compensation for all overtime worked.

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

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

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

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

27 85. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice

1 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
3 overtime rate.

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

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

25 **(Cal. Lab. Code §§ 226.7 & 512)**

26 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
27 **Defendants)**

28 88. 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.

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

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

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

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FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

92. 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.

93. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on DEFENDANTS' premises for those rest breaks.

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

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

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2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

4 **(Cal. Lab. Code §§ 2802)**

5 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
6 **Defendants)**

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

10 97. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

15 98. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
16 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
17 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
18 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
19 CLASS members for expenses which included, but were not limited to, costs related to using their
20 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,
21 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
22 their personal cell phones to respond to work related issues. DEFENDANTS' uniform policy,
23 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
24 CLASS members for expenses resulting from using their personal cellular phones for
25 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These
26 expenses were necessary to complete their principal job duties. DEFENDANTS is estopped by
27 DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were
28 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the

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

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

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8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
10 **(Cal. Lab. Code §§ 226 and 226.2)**

11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and**
12 **against all Defendants)**

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

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

- 18 a. Gross wages earned;
- 19 b. Total hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from payment of
21 overtime under subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission;
- 23 c. The number of piece rate units earned and any applicable piece rate if the employee
24 is paid on a piece-rate basis;
- 25 d. All deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item;
- 27 e. Net wages earned;
- 28 f. The inclusive dates of the period for which the employee is paid;

- 1 g. The name of the employee and his or her social security number, except that by
2 January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown
4 on the itemized statement;
- 5 h. The name and address of the legal entity that is the employer; and
- 6 i. All applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked at each hourly rate by the employee.

8 102. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate
9 employees with an “accurate itemized” statement in writing showing:

- 10 a. The total hours of compensable rest and recovery periods, the rate of
11 compensation, and the gross wages paid for those periods during the
12 pay period; and
- 13 b. The total hours of other nonproductive time, the rate of
14 compensation, and the gross wages paid for that time during the pay
15 period.

16 103. When DEFENDANT did not accurately record PLAINTIFF’s and other
17 CALIFORNIA CLASS Members’ missed meal and rest breaks and wages, including overtime
18 wages, owed, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
19 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
20 other things, the correct overtime rate, missed meal and rest periods and reporting time wages
21 owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides
22 that every employer shall furnish each of his or her employees with an accurate itemized wage
23 statement in writing showing, among other things, gross wages earned and all applicable hourly
24 rates in effect during the pay period and the corresponding amount of time worked at each hourly
25 rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to
26 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
27 Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF and the
28

1 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
2 Code § 226.

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

14
15 **EIGHTH CAUSE OF ACTION**
16 **FAILURE TO PAY WAGES WHEN DUE**
17 **(Cal. Lab. Code §§201, 202, 203)**

18 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
19 **Defendants)**

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

23 106. Cal. Lab. Code § 200 provides that:

24 As used in this article:(a) "Wages" includes all amounts for labor performed by
25 employees of every description, whether the amount is fixed or ascertained by the
26 standard of time, task, piece, Commission basis, or other method of calculation. (b)
27 "Labor" includes labor, work, or service whether rendered or performed under
28 contract, subcontract, partnership, station plan, or other agreement if the labor to be
paid for is performed personally by the person demanding payment.

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

4 108. Cal. Lab. Code § 202 provides, in relevant part, that:

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

14 109. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

16 110. Cal. Lab. Code § 203 provides:

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

22 111. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
23 Members terminated and DEFENDANTS has not tendered payment of wages, to these employees
24 who missed meal and rest breaks, as required by law.

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

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1 **NINTH CAUSE OF ACTION**

2 **VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT**

3 **(Cal. Lab. Code §§ 2698 *et seq.*)**

4 *(Alleged by PLAINTIFF in his representative capacity against all Defendants)*

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

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

16 115. PLAINTIFF brings this Representative Action on behalf of the State of California
17 with respect to herself and all of DEFENDANT'S current and former non-exempt employees
18 employed in California ("AGGRIEVED EMPLOYEES") between December 28, 2019 and a
19 future date set by this Court ("PAGA PERIOD").

20 116. To the extent equitable tolling operates to toll the claims asserted by the
21 PLAINTIFF against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

22 117. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to
23 the California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled
24 the statute of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for
25 statutes of limitation and repose for civil causes of action that are 180 days or less, or (b) October
26 1, 2020 for statutes of limitation and repose for civil causes of action that exceed 180 days.

118. At all relevant times, for the reasons described herein, and others, PLAINTIFF and similarly situated employees were aggrieved employees of DEFENDANT within the meaning of Labor Code Section 2699(c).

119. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

120. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated December 28, 2020, PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEENDANT of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

121. As of the date of this filing, the LWDA has not provided any notice by certified mail of its intent to investigate the DEFENDANTS’ alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

122. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for AGGIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMOPLOYEE for any initial violation and one

1 thousand dollars for each subsequent violation [penalty per Labor
2 Code Section 226.3];

3 c. For violations of Labor Code Sections 204, a civil penalty in
4 the amount of one hundred dollars (\$100) for each AGGRIEVED
5 EMPLOYEE for any initial violation and two hundred dollars (\$200)
6 for AGGRIEVED EMPLOYEE for each subsequent violation [penalty
7 per Labor Code Section 210];

8 d. For violations of Labor Code Sections 226.7, 510 and 512, a
9 civil penalty in the amount of fifty dollars (\$50) for each underpaid
10 AGGRIEVED EMPLOYEE for the initial violation and hundred
11 dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each
12 subsequent violation [penalty per Labor Code Section 558];

13 e. For violations of Labor Code Section 2269(a), a civil penalty
14 in the amount of two hundred fifty dollars (\$250) per AGGRIEVED
15 EMPLOYEE per violation in an initial citation and one thousand
16 dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent
17 violation [penalty per Labor Code Section 226.3];

18 f. For violations of Labor Code Section 1174(d), a civil penalty
19 in the amount of five hundred (\$500) dollars for per AGGRIEVED
20 EMPLOYEE [penalty per Labor Code Section 1174.5].

21 g. For violations of Labor Code Sections 1194, 1194.2, 1197,
22 1198 and 1199, a civil penalty in the amount of one hundred dollars
23 (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial
24 violation and two hundred dollars fifty (\$250) per AGGRIEVED
25 EMPLOYEE per pay period for each subsequent violation [penalty
26 per Labor Code Section].

27 123. For all provisions of the Labor Code for which civil penalty is not specifically
28 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100)

1 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred
2 dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation.
3 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
4 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code
5 Section 2699(g)(1).

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

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

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

- 22 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
23 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
24 action pursuant to Cal. Code of Civ. Proc. § 382;
25 b. Compensatory damages, according to proof at trial, including compensatory
26 damages for minimum wages, overtime wages, reporting time wages, unreimbursed
27 expenses, and other compensation due to PLAINTIFF and the other members of the
28 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA

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- LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 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 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; and
 - e. 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 State of California and the AGGRIEVED EMPLOYEES
- a. For reasonable attorneys’ fees and costs of suit to the extent permitted by law, including pursuant to Cal. Cal. Code § 2699, et seq.
 - b. For civil penalties to the extent permitted bylaw pursuant to the Labor Code under the Private Attorneys General Act; and
 - c. For such other relief as the Court deems just and proper

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1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or
- 6 §1197.

7

8 DATED: March 3, 2021

9

10 **ZAKAY LAW GROUP, APLC**

11

12 By: 

13

14 Shani O. Zakay
15 Attorney for Plaintiff

16

17 **DEMAND FOR A JURY TRIAL**

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

20 DATED: March 3, 2021

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22 **ZAKAY LAW GROUP, APLC**

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24 By: 

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26 Shani O. Zakay
27 Attorney for Plaintiff

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EXHIBIT 1



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December 28, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

MEDICINAL ORGANIC LLC
c/o Alexis Bronson
1602 53rd Avenue
Oakland CA, 94601
Via Certified Mail with Return Receipt

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents FARHAAN HIRANI (“Client”) and other aggrieved employees in a class action against MEDICINAL ORGANIC LLC (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Client was employed by Defendant in California. Client was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Client, and all those similarly situated, with all legally mandated off-duty meal and rest periods and wages for all the time they worked.

As a consequence, Client contends that Defendant failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Client contend that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,

1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Client, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Clients, and (v) sets forth the illegal practices used by Defendants. Client therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF ALAMEDA**

9
10 FARHAAN HIRANI, an individual, on
11 behalf of himself, and on behalf of all
persons similarly situated,

12 Plaintiff,

13 vs.

14 MEDICINAL ORGANIC LLC., a
15 California Limited Liability Company;
and Does 1 through 50, Inclusive,

16 Defendants.
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Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §§ 17200, *et*
seq.;

2. FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194,
1197 & 1197.1;

3. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 510, *et*
seq.;

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; and,

8. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Medicinal Organic LLC. (“DEFENDANT”) is a California Limited
7 Liability Company and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in the state of California.

9 2. DEFENDANT is a cannabis delivery service serving California.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to overtime pay and meal and rest periods from February of 2018 to February
12 of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
13 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
14 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

23 THE CONDUCT

24 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
25 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
26 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
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1 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
2 all time worked, meaning the time during which an employee was subject to the control of an
3 employer, including all the time the employee was permitted or suffered to permit this work.
4 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the
5 clock without paying them for all the time they were under DEFENDANT's control.
6 Specifically, as a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
7 CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their
8 meal periods. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
9 minimum wages and overtime wage compensation by working without their time being
10 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
11 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
12 worked, is evidenced by DEFENDANT's business records.

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

17 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
18 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
19 PLAINTIFF 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 PLAINTIFF and other CALIFORNIA CLASS Members,
24 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
25 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
26 the incentive program to potential and new employees as part of the compensation package. As
27 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
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1 CLASS Members must be included in the “regular rate of pay.” The failure to do so has
2 resulted in an underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
3 CLASS Members by DEFENDANT.

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

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

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

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

1 Code § 226.

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

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

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

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

1 DEFENDANT also provided PLAINTIFF with a pay stub that failed to comply with all the
2 requirements set forth in Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid
3 PLAINTIFF the overtime compensation still owed to him or any penalty wages owed to him
4 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not
5 exceed the sum or value of \$75,000.

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 PLAINTIFF 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 PLAINTIFF worked and resided in this County for
14 DEFENDANT, and DEFENDANT (i) currently maintains and at all relevant times maintained
15 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
16 committed the wrongful conduct herein alleged in this County against members of the
17 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

18 **THE CALIFORNIA CLASS**

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

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

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

24 25. DEFENDANT has the legal burden to establish that each and every
25 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
26 accurately calculate the “regular rate of pay” by including the incentive compensation that
27 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.

1 DEFENDANT, however, failed to have in place during the CALIFORNIA CLASS PERIOD
2 and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA
3 CLASS Member is paid the applicable overtime rate for all overtime worked, so as to satisfy
4 their burden. This common business practice applicable to each and every CALIFORNIA
5 CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive
6 under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages,
7 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 so
13 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 uniformly violated the rights of the CALIFORNIA CLASS under
18 California 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 minimum and overtime wages due the CALIFORNIA CLASS for all time
23 worked, and failed to accurately record the applicable rates of all overtime
24 worked by the 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 PLAINTIFF and the members of the CALIFORNIA
3 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 PLAINTIFF 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 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
11 *seq.*, by failing to pay the correct federal overtime wages to the
12 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
13 required by the FLSA, and retaining the unpaid federal overtime to the
14 benefit of DEFENDANT;

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

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

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

25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the CALIFORNIA
27 CLASS will apply uniformly to every member of the CALIFORNIA
28

1 CLASS;

2 (c) The claims of the representative PLAINTIFF are typical of the claims of
3 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
4 other members of the CALIFORNIA CLASS, was subjected to the
5 uniform employment practices of DEFENDANT and was a non-exempt
6 employee paid on an hourly basis and paid additional non-discretionary
7 incentive wages who was subjected to the DEFENDANT's practice and
8 policy which failed to pay the correct rate of overtime wages due to the
9 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
10 CLASS and thereby underpaid overtime compensation to the
11 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
12 result of DEFENDANT's employment practices. PLAINTIFF and the
13 members of the CALIFORNIA CLASS were and are similarly or
14 identically harmed by the same unlawful, deceptive, unfair and pervasive
15 pattern of misconduct engaged in by DEFENDANT; and,

16 (d) The representative PLAINTIFF will fairly and adequately represent and
17 protect the interest of the CALIFORNIA CLASS, and has retained
18 counsel who are competent and experienced in Class Action litigation.
19 There are no material conflicts between the claims of the representative
20 PLAINTIFF and the members of the CALIFORNIA CLASS that would
21 make class certification inappropriate. Counsel for the CALIFORNIA
22 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
23 Members.

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

26 (a) Without class certification and determination of declaratory, injunctive,
27 statutory and other legal questions within the class format, prosecution of
28

1 separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA CLASS which would establish
5 incompatible standards of conduct for the parties opposing the
6 CALIFORNIA CLASS; and/or,

7 2) Adjudication with respect to individual members of the
8 CALIFORNIA CLASS which would as a practical matter be
9 dispositive of interests of the other members not party to the
10 adjudication or substantially impair or impede their ability to
11 protect their interests.

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

18 1) With respect to the First Cause of Action, the final relief on behalf
19 of the CALIFORNIA CLASS sought does not relate exclusively to
20 restitution because through this claim PLAINTIFF seeks
21 declaratory relief holding that the DEFENDANT's policy and
22 practices constitute unfair competition, along with declaratory
23 relief, injunctive relief, and incidental equitable relief as may be
24 necessary to prevent and remedy the conduct declared to constitute
25 unfair competition;

26 (c) Common questions of law and fact exist as to the members of the
27 CALIFORNIA CLASS, with respect to the practices and violations of
28

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

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

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

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

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

23 3) In the context of wage litigation because a substantial number of
24 individual CALIFORNIA CLASS Members will avoid asserting
25 their legal rights out of fear of retaliation by DEFENDANT, which
26 may adversely affect an individual's job with DEFENDANT or
27 with a subsequent employer, the Class Action is the only means to
28

1 assert their claims through a representative; and,

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

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

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

1 damages and injuries which DEFENDANT's actions have inflicted upon
2 the CALIFORNIA CLASS;

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

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

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

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

15 32. DEFENDANT maintains records from which the Court can ascertain and identify
16 by job title each of DEFENDANT's employees who as have been subjected to DEFENDANT's
17 company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to
18 amend the Complaint to include any additional job titles of similarly situated employees when
19 they have been identified.

20
21 **THE CALIFORNIA LABOR SUB-CLASS**

22 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
23 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
24 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
25 SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint
26 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
27 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
28

1 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
2 (\$5,000,000.00).

3 34. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
7 compensation for the overtime worked by PLAINTIFF and the other members of the
8 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
9 work, required employees to perform this work and permitted or suffered to permit this
10 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
11 CLASS Members overtime wages at the correct amount to which these employees are entitled
12 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
13 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
14 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

15 35. DEFENDANT maintains records from which the Court can ascertain and identify
16 by name and job title, each of DEFENDANT’s employees who have been subjected to
17 DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFF will
18 seek leave to amend the complaint to include any additional job titles of similarly situated
19 employees when they have been identified.

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

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

- 24 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
25 overtime compensation to members of the CALIFORNIA LABOR SUB-
26 CLASS in violation of the California Labor Code and California
27 regulations and the applicable California Wage Order;

- 1 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
2 entitled to overtime compensation for overtime worked under the overtime
3 pay requirements of California law;
- 4 (c) Whether DEFENDANT failed to accurately record the applicable
5 overtime rates for all overtime worked PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS;
- 7 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS with legally
9 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 10 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
11 members of the CALIFORNIA LABOR SUB-CLASS with accurate
12 itemized wage statements;
- 13 (f) Whether DEFENDANT has engaged in unfair competition by the
14 above-listed conduct;
- 15 (g) The proper measure of damages and penalties owed to the members of the
16 CALIFORNIA LABOR SUB-CLASS; and,
- 17 (h) Whether DEFENDANT's conduct was willful.

18 38. DEFENDANT, as a matter of company policy, practice and procedure, failed to
19 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
20 Members and failed to provide accurate records of the applicable overtime rates for the
21 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
22 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly
23 basis by DEFENDANT according to company procedures as alleged herein above. This
24 business practice was applied to each and every member of the CALIFORNIA LABOR SUB-
25 CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

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

- 1 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
3 CLASS the correct overtime pay for which DEFENDANT is liable
4 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
6 accurately pay PLAINTIFF and the members of the CALIFORNIA
7 LABOR SUB-CLASS the correct minimum wage pay for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFF and the other members of the CALIFORNIA CLASS with
11 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
12 and the legally required rest breaks;
- 13 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
14 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
15 itemized statement in writing showing all accurate and applicable
16 overtime rates in effect during the pay period and the corresponding
17 amount of time worked at each overtime rate by the employee;
- 18 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
19 when an employee is discharged or quits from employment, the employer
20 must pay the employee all wages due without abatement, by failing to
21 tender full payment and/or restitution of wages owed or in the manner
22 required by California law to the members of the CALIFORNIA LABOR
23 SUB-CLASS who have terminated their employment; and,
- 24 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
25 the CALIFORNIA LABOR SUB-CLASS members with necessary
26 expenses incurred in the discharge of their job duties.

27 40. This Class Action meets the statutory prerequisites for the maintenance of a Class
28

1 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

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

1 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
2 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

25 (c) Common questions of law and fact predominate as to the members of the
26 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
27 violations of California Law as listed above, and predominate over any
28

1 question affecting only individual CALIFORNIA LABOR SUB-CLASS
2 Members, and a Class Action is superior to other available methods for
3 the fair and efficient adjudication of the controversy, including
4 consideration of:

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

1 Action is the only means to assert their claims through a
2 representative; and,

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

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

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

1 damages and injuries which DEFENDANT's actions have inflicted upon
2 the CALIFORNIA LABOR SUB-CLASS;

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

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

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

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

19
20 **FIRST CAUSE OF ACTION**

21 **For Unlawful Business Practices**

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

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

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

27 44. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
28

1 Code § 17021.

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

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

10 Cal. Bus. & Prof. Code § 17203.

11 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 204, 210, 212, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, Cal. Code
15 Regs., tit. 8, § 11040. Subdivision 5(B), and the Fair Labor Standards Act (“FLSA”), 29 U.S.C.
16 §§ 201, *et seq.*, for which this Court should issue declaratory and other equitable relief pursuant
17 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
18 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

1 accurately to record the applicable rate of all overtime worked, and failed to provide the
2 required amount of overtime compensation due to a miscalculation of the overtime rate that
3 cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
4 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
5 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
6 including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

22
23 **SECOND CAUSE OF ACTION**

24 **For Failure To Pay Minimum Wages**

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

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

27 **and Against All Defendants)**

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

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

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

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

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

16 63. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
18 time they work, including time spent engaging in work tasks while off the clock. To the extent
19 that these off-the-clock job tasks do not qualify for overtime premium payment, DEFENDANT
20 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
21 §§ 1194, 1197, and 1197.1. As set forth herein, DEFENDANT's policy and practice was to
22 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

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

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

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

17
18 **THIRD CAUSE OF ACTION**

19 **For Failure To Pay Overtime Compensation**

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

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

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

26 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
28

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

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

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

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

17 77. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
19 overtime worked and correct applicable overtime rate for the amount of overtime they worked.
20 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally
21 deny timely payment of wages due for the overtime worked by PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay
23 these employees the correct applicable overtime wages for all overtime worked.

24 78. DEFENDANT's unlawful wage and hour practices manifested, without
25 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
26 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including,
28

1 the work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
2 workweek.

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

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

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

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

23 83. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
25 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
26 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed

1 to accurately record and pay using the applicable overtime rate as evidenced by
2 DEFENDANT's business records and witnessed by employees.

3 84. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS for the true time they worked, PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
7 injury in amounts which are presently unknown to them and which will be ascertained
8 according to proof at trial.

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

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

23 87. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
25 interest, statutory costs, as well as the assessment of any statutory penalties against
26 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
27 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
28

1 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S
2 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
3 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
4 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
5 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF
6 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
7 statutory costs.

8
9 **FOURTH CAUSE OF ACTION**

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

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

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

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

17 89. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
18 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
19 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
20 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
21 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
22 duties for the legally required off-duty meal periods. As a result of their rigorous work
23 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
24 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
25 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
27 by DEFENDANT's business records. As a result, PLAINTIFF and other members of the

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

3 90. 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 were not provided a meal period, in accordance with the applicable
6 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
7 each workday that a meal period was not provided.

8 91. 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 **FIFTH 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 92. 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 93. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
22 time to time required to work in excess of four (4) hours without being provided ten (10) minute
23 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
24 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
25 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
26 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
27 ten (10) hours or more. From time to time, PLAINTIFF and other CALIFORNIA LABOR
28

1 SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result
2 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
3 Members were periodically denied their proper rest periods by DEFENDANT and
4 DEFENDANT's managers.

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

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

14
15 **SIXTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 226]**

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

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

23 97. Cal. Labor Code § 226 provides that an employer must furnish employees with
24 an "accurate itemized" statement in writing showing:

25 (1) gross wages earned,

26 (2) total hours worked by the employee, except for any employee whose compensation
27 is solely based on a salary and who is exempt from payment of overtime under
28

1 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
2 Commission,
3 (3) the number of piecerate units earned and any applicable piece rate if the employee
4 is paid on a piece-rate basis,
5 (4) all deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item,
7 (5) net wages earned,
8 (6) the inclusive dates of the period for which the employee is paid,
9 (7) the name of the employee and his or her social security number, except that by
10 January 1, 2008, only the last four digits of his or her social security number or an
11 employee identification number other than a social security number may be shown on
12 the itemized statement,
13 (8) the name and address of the legal entity that is the employer, and
14 (9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee.

16 98. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
17 employees with an accurate itemized wage statement in writing showing, among other things,
18 gross wages earned and all applicable hourly rates in effect during the pay period and the
19 corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated
20 Cal. Lab. Code § 226(a)(8) from time to time by failing to include both DEFENDANT's name
21 and address of its legal entity on the itemized wage statements of PLAINTIFF and other
22 members of the CALIFORNIA CLASS. From time to time, DEFENDANT violated Cal. Lab.
23 Code § 226 by failing to provide wage statements that identified the correct gross wages earned.
24 Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
25 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
26 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
27 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

12
13 **SEVENTH CAUSE OF ACTION**

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

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

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

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

21 101. Cal. Lab. Code § 200 provides that:

22 As used in this article:

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

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

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

1 immediately.”

2 103. Cal. Lab. Code § 202 provides, in relevant part, that:

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

12 104. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
13 CLASS Members’ employment contract.

14 105. Cal. Lab. Code § 203 provides:

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

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

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

23 **EIGHTH CAUSE OF ACTION**

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

25 **[Cal. Lab. Code § 2802]**

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

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

4 109. Cal. Lab. Code § 2802 provides, in relevant part, that:

5 An employer shall indemnify his or her employee for all necessary expenditures
6 or losses incurred by the employee in direct consequence of the discharge of his
7 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.

8 110. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
9 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
10 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
11 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
12 CLASS members for expenses which included, but were not limited to, costs related to using
13 their personal cell phones on behalf of and for the benefit of DEFENDANT. Specifically,
14 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to
15 use their personal cell phones in order to perform work related job tasks. DEFENDANT's
16 policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
17 LABOR SUB-CLASS members for expenses resulting from using their personal cell phones
18 for DEFENDANT within the course and scope of their employment for DEFENDANT. These
19 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
20 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses
21 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-
22 CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
23 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required
24 to do under the laws and regulations of California.

25 111. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
26 by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
27 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
28

1 at the statutory rate and costs under Cal. Lab. Code § 2802.

2
3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
2 in which a violation occurs and one hundred dollars (\$100) per each member of
3 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
5 an award of costs for violation of Cal. Lab. Code § 226;
- 6 E) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
7 CLASS as a penalty from the due date thereof at the same rate until paid or until
8 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.;
- 9 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
10 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
11 costs of suit; and,
- 12 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
13 1197.

14 3. On all claims:

- 15 A) An award of interest, including prejudgment interest at the legal rate;
16 B) Such other and further relief as the Court deems just and equitable; and,
17 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
18 law, including, but not limited to, pursuant to Labor Code § 226, § 1194 and/or
19 § 2802.

20 Dated: May 2, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

21
22 By: _____
23 Norman B. Blumenthal
24 Attorneys for Plaintiff
DEMAND FOR A JURY TRIAL

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

26 Dated: May 2, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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By: _____
Norman B. Blumenthal
Attorneys for Plaintiff