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Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 DAVID STEVENS, an individual, on
15 behalf of himself and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 KAMPS PROPANE, INC., a California
20 Corporation; and Does 1 through 50,
21 Inclusive;

22 Defendants.

Case No. 37-2021-00016367-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

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

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

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

4. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;

5. FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;

6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF CAL. LAB. CODE § 226;

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

8. FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE
§§ 201, 202 AND 203; and,

9. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Kamps Propane, Inc. (“DEFENDANT”) is a California Corporation
7 that at all relevant times mentioned herein conducted and continues to conduct substantial and
8 regular business throughout California.

9 2. DEFENDANT was founded in 1969. The company's line of business includes the
10 retail sale of bottled or bulk liquefied petroleum gas.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to overtime pay and meal and rest periods from 2004 to October of 2020.
13 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-
14 exempt employee paid in whole or in part on an hourly basis and received additional
15 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

24 THE CONDUCT

25
26 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
27 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
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1 CLASS for their minimum and overtime wages. DEFENDANT unlawfully and unilaterally
2 failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and
3 other members of the CALIFORNIA CLASS in order to avoid paying these employees the
4 correct compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA
5 CLASS forfeited wages due them for working without compensation at the correct minimum
6 wage and overtime rates. DEFENDANT's policy and practice to not pay the members of the
7 CALIFORNIA CLASS the correct compensation for all time worked in accordance with
8 applicable law is evidenced by DEFENDANT's business records. This policy and practice of
9 DEFENDANT was intended to purposefully avoid the payment of the correct compensation as
10 required by California law which allowed DEFENDANT to illegally profit and gain an unfair
11 advantage over competitors who complied with the law. Further, PLAINTIFF and other
12 members of the CALIFORNIA CLASS from time to time were not paid wages for all time
13 worked, including overtime wages, such that in the aggregate employees were underpaid wages
14 as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
15 employees.

16 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
17 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
18 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
19 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
20 all time worked, meaning the time during which an employee was subject to the control of an
21 employer, including all the time the employee was permitted or suffered to permit this work.
22 DEFENDANT required these employees to work off the clock without paying them for all the
23 time they were under DEFENDANT's control. Specifically, DEFENDANT required
24 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
25 meal break. PLAINTIFF was from time to time interrupted by work assignments. Indeed there
26 were days where PLAINTIFF did not even receive a partial lunch. As a result, PLAINTIFF and
27 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation
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1 by working without their time being accurately recorded and without compensation at the
2 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
3 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
4 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

5 10. State and federal law provides that employees must be paid overtime at one-and-
6 one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS
7 Members were compensated at an hourly rate plus incentive pay that was tied to specific
8 elements of an employee’s performance.

9 11. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
10 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
11 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
12 performance for DEFENDANT. The non-discretionary incentive program provided all
13 employees paid on an hourly basis with incentive compensation when the employees met the
14 various performance goals set by DEFENDANT. However, when calculating the regular rate
15 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
16 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular
17 rate of pay” for purposes of calculating overtime pay. Management and supervisors described
18 the incentive program to potential and new employees as part of the compensation package. As
19 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
20 CLASS Members must be included in the “regular rate of pay.” The failure to do so has
21 resulted in a underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
22 CLASS Members by DEFENDANT. DEFENDANT also underpaid sick pay wages to
23 PLAINTIFF and other CALIFORNIA CLASS Members by failing to pay such wages at the
24 regular rate of pay. Specifically, PLAINTIFF and other non-exempt employees regularly earn
25 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
26 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
27 pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

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

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

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

15 15. 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. DEFENDANT from time to time
19 failed to provide to PLAINTIFF and the CALIFORNIA CLASS wage statements that identify
20 the correct gross and net wages earned, the applicable number of hours worked and rates of pay.
21 Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay
22 and number of hours worked, including for the "Retroactive," item of pay, which is a wage
23 payment. Aside, from the violations listed above in this paragraph, DEFENDANT failed to
24 issue to PLAINTIFF and other CALIFORNIA CLASS members an itemized wage statement
25 that lists all the requirements under California Labor Code 226 *et seq.*

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

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

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

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

4
5 **JURISDICTION AND VENUE**

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

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

15
16 **THE CALIFORNIA CLASS**

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

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

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

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

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

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

13 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 29. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
16 law by:

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

2 (c) Committing an act of unfair competition in violation of the California
3 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
4 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
5 *seq.*, by failing to pay the correct federal overtime wages to the
6 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
7 required by the FLSA, and retaining the unpaid federal overtime to the
8 benefit of DEFENDANT.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 2 1) The interests of the members of the CALIFORNIA CLASS in
3 individually controlling the prosecution or defense of separate
4 actions in that the substantial expense of individual actions will be
5 avoided to recover the relatively small amount of economic losses
6 sustained by the individual CALIFORNIA CLASS Members when
7 compared to the substantial expense and burden of individual
8 prosecution of this litigation;
- 9 2) Class certification will obviate the need for unduly duplicative
10 litigation that would create the risk of:
- 11 A. Inconsistent or varying adjudications with respect to
12 individual members of the CALIFORNIA CLASS, which
13 would establish incompatible standards of conduct for the
14 DEFENDANT; and/or,
- 15 B. Adjudications with respect to individual members of the
16 CALIFORNIA CLASS would as a practical matter be
17 dispositive of the interests of the other members not parties
18 to the adjudication or substantially impair or impede their
19 ability to protect their interests;
- 20 3) In the context of wage litigation because a substantial number of
21 individual CALIFORNIA CLASS Members will avoid asserting
22 their legal rights out of fear of retaliation by DEFENDANT, which
23 may adversely affect an individual's job with DEFENDANT or
24 with a subsequent employer, the Class Action is the only means to
25 assert their claims through a representative; and,
- 26 4) A class action is superior to other available methods for the fair
27 and efficient adjudication of this litigation because class treatment
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1 will obviate the need for unduly and unnecessary duplicative
2 litigation that is likely to result in the absence of certification of
3 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

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

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

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

17
18 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

- (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to overtime compensation for overtime worked under the overtime pay requirements of California law;

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

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

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

- 25 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
26 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
27 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 LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks; and,
- (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties; and,
- (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS

Members 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 LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANT's practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

42. In addition to meeting the statutory prerequisites to a Class Action, this action is

properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

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

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

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

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

consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair

1 and efficient adjudication of this litigation because class treatment
2 will obviate the need for unduly and unnecessary duplicative
3 litigation that is likely to result in the absence of certification of
4 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

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

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

16
17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

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

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

21 44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
23 Complaint.

24 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
25 Code § 17021.

26 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
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1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

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

7 Cal. Bus. & Prof. Code § 17203.

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

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

22 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
24 members of the CALIFORNIA CLASS, Fair Labor Standards Act wages due for overtime
25 worked as a result of failing to include incentive compensation into their regular rates for
26 purposes of computing overtime pay, failed to pay minimum and overtime wages for all
27 time worked, failed to accurately to record the applicable rate of all overtime worked, failed
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1 to pay reporting time wages owed, failed to reimburse necessary business expenses incurred,
2 and failed to provide the required amount of overtime compensation due to a miscalculation
3 of the overtime rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
4 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et*
5 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal.
6 Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

11 51. 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 52. 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
17 pay for each workday in which a second off-duty meal period was not timely provided for
18 each ten (10) hours of work.

19 53. 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 54. By and through the unlawful and unfair business practices described herein,
23 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and
24 the other members of the CALIFORNIA CLASS, including earned wages for all overtime
25 worked, and has deprived them of valuable rights and benefits guaranteed by law and
26 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
27 allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

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

5 **and Against All Defendants)**

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

9 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
11 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
12 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
13 CALIFORNIA CLASS Members.

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

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

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

21 80. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
23 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
24 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS.

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

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

9 83. 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 the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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8 **FIFTH CAUSE OF ACTION**

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

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

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

13 93. 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
15 of this Complaint.

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

95. DEFENDANT 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.

96. 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.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

97. 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.

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

(1) gross wages earned,

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

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

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

99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned and correct amount of time worked. 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. Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the “Retroactive,” item of pay, which is a wage payment. Aside, from the violations listed above in this paragraph, 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, DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

100. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the

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

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11 **SEVENTH CAUSE OF ACTION**

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

13 **[Cal. Lab. Code § 2802]**

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

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

19 102. Cal. Lab. Code § 2802 provides, in relevant part, that:

20 An employer shall indemnify his or her employee for all necessary expenditures
21 or losses incurred by the employee in direct consequence of the discharge of his
22 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.

23 103. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
24 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
25 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
26 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
27 CLASS members for expenses which included, but were not limited to, costs related to using

1 their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically,
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by
3 DEFENDANT to use their personal cellular phones in order to perform work related job tasks.
4 DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA
5 LABOR SUB-CLASS members for expenses resulting from using their personal cellular
6 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
7 These expenses were necessary to complete their principal job duties. DEFENDANT is
8 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these
9 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR
10 SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
11 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required
12 to do under the laws and regulations of California.

13 104. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
14 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
15 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
16 at the statutory rate and costs under Cal. Lab. Code § 2802.

17 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

26 As used in this article:

27 (a) "Wages" includes all amounts for labor performed by employees of every
28 description, whether the amount is fixed or ascertained by the standard of time,

1 task, piece, Commission basis, or other method of calculation.

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

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

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

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

18 109. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
19 CLASS Members' employment contract.

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

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

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

112. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
demands up to thirty days of pay as penalty for not paying all wages due at time of termination
for 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.

1 **NINTH CAUSE OF ACTION**

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

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

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

5 113. PLAINTIFF realleges and incorporates by reference, as though fully set forth
6 herein, the prior paragraphs of this 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
12 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
13 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
14 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
15 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
16 subject to arbitration.

17 115. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to
20 himself and all individuals who are or previously were employed by DEFENDANT in
21 California and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during
22 the time period of December 4, 2019 until a date as determined by the Court (the "PAGA
23 PERIOD").

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

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

17 118. All of the conduct and violations alleged herein occurred during the
18 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
19 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
20 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
21 2018 AJDAR 12157 (Certified for Publication 12/19/18).

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

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
22 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
23 C) Meal and rest period compensation pursuant to California Labor Code Section
24 226.7 and the applicable IWC Wage Order;
25 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
26 in which a violation occurs and one hundred dollars (\$100) per each member of
27 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
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period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

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

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

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

H) The greater of all actual damages or one hundred dollars (\$100) for the initial pay period in which a violation occurs and two hundred dollars (\$200) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, for violation of Cal. Lab. Code § 204(a), in accordance with Cal. Lab. Code § 210.

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

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

4. On all claims:

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

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

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

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§2802.

Dated: April 13, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Norman Blumenthal

Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: April 13, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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