

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

**WRITERS E-MAIL:
Nick@bamlawca.com**

**WRITERS EXT:
1004**

**December 4, 2020
CA2013**

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

**Labor and Workforce Development Agency
Online Filing**

**Kamps Propane, Inc.
Certified Mail #70200640000074883542
Business Filings Incorporated
818 West Seventh Street, Suite 930
Los Angeles, CA 90017**

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Kamps Propane, Inc. in California and classified as non-exempt employees during the time period of December 4, 2019 until a date as determined by the Court. Our offices represent Plaintiff David Stevens and other Aggrieved Employees in a lawsuit against Kamps Propane, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee from 2004 to October of 2020 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture,*

LLC, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). 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 was a wage payment. Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates 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.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

10 DAVID STEVENS, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

Plaintiff,

13 vs.

14 KAMPS PROPANE, INC., a California
15 Corporation; and Does 1 through 50,
Inclusive;

16 Defendants.

Case No. _____

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.

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
28

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 25 **THE CONDUCT**

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
28

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.

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

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

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

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

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

11 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
12 CALIFORNIA CLASS Members were from time to time also required to work in excess of four
13 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
14 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
15 (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
16 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at
17 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
18 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one hour
19 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
20 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
21 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
22 Order requires employers to provide employees with off-duty rest periods, which the California
23 Supreme Court defined as time during which an employee is relieved from all work related
24 duties and free from employer control. In so doing, the Court held that the requirement under
25 California law that employers authorize and permit all employees to take rest period means that
26 employers must relieve employees of all duties and relinquish control over how employees
27 spend their time which includes control over the locations where employees may take their rest
28

1 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
2 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
3 other CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
4 Defendant's rule which stated PLAINTIFF and other CALIFORNIA CLASS Members could
5 not leave the work premises during their rest period.

6 15. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
7 employees with an accurate itemized wage statement in writing showing, among other things,
8 gross wages earned and all applicable hourly rates in effect during the pay period and the
9 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
10 failed to provide to PLAINTIFF and the CALIFORNIA CLASS wage statements that identify
11 the correct gross and net wages earned, the applicable number of hours worked and rates of pay.
12 Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay
13 and number of hours worked, including for the "Retroactive," item of pay, which is a wage
14 payment. Aside, from the violations listed above in this paragraph, DEFENDANT failed to
15 issue to PLAINTIFF and other CALIFORNIA CLASS members an itemized wage statement
16 that lists all the requirements under California Labor Code 226 *et seq.*

17 16. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
18 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
19 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence
20 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
21 2802, employers are required to indemnify employees for all expenses incurred in the course
22 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
23 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
24 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
25 directions of the employer, even though unlawful, unless the employee, at the time of obeying
26 the directions, believed them to be unlawful."

27 17. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
28

1 Members as a business expense, were required by DEFENDANT to use their own personal
2 cellular phones as a result of and in furtherance of their job duties as employees for
3 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
4 associated with the use of their personal cellular phones for DEFENDANT's benefit.
5 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
6 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
7 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
8 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
9 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
10 benefit of DEFENDANT.

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

22 19. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to
23 him in the form of two components. One component of PLAINTIFF's compensation was a
24 base hourly wage. The second component of PLAINTIFF's compensation were non-
25 discretionary incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF
26 met certain predefined performance requirements. PLAINTIFF met DEFENDANT's
27 predefined eligibility performance requirements in various pay periods throughout his
28

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

21 **JURISDICTION AND VENUE**

22
23 20. This Court has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
25 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
26 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

27 21. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28

1 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
2 maintained offices and facilities in this County and/or conducts substantial business in this
3 County, and (ii) committed the wrongful conduct herein alleged in this County against members
4 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

5
6 **THE CALIFORNIA CLASS**

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

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

19 24. The California Legislature has commanded that "all wages... ..earned by any
20 person in any employment are due and payable twice during each calendar month, on days
21 designated in advance by the employer as the regular paydays", and further that "[a]ny work
22 in excess of eight hours in one workday and any work in excess of 40 hours in any one
23 workweek . . . shall be compensated at the rate of no less than one and one-half times the
24 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare
25 Commission (IWC), however, is statutorily authorized to "establish exemptions from the
26 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
27 professional employees, provided [inter alia] that the employee is primarily engaged in duties
28

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

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

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

23 27. 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
27 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
28

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

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

5 29. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
6 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
9 place company policies, practices and procedures that failed to pay all
10 minimum and overtime wages due the CALIFORNIA CLASS for all time
11 worked, and failed to accurately record the applicable rates of all overtime
12 worked by the CALIFORNIA CLASS;

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

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

26 (d) Committing an act of unfair competition in violation of the California
27 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
28

1 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
2 the CALIFORNIA CLASS members; and,

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

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

- 10 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
11 that the joinder of all such persons is impracticable and the disposition of
12 their claims as a class will benefit the parties and the Court;
- 13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
14 that are raised in this Complaint are common to the CALIFORNIA
15 CLASS will apply to every member of the CALIFORNIA CLASS;
- 16 (c) The claims of the representative PLAINTIFF are typical of the claims of
17 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
18 other members of the CALIFORNIA CLASS, was subjected to the
19 employment practices of DEFENDANT and was a non-exempt employee
20 paid on an hourly basis and paid additional non-discretionary incentive
21 wages who was subjected to the DEFENDANT's practice and policy
22 which fails to pay the correct rate of overtime wages due to the
23 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
24 CLASS and thereby underpays overtime compensation to the
25 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
26 result of DEFENDANT's employment practices. PLAINTIFF and the
27 members of the CALIFORNIA CLASS were and are similarly or
28

1 identically harmed by the same unlawful, deceptive and unfair
2 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

- 26 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
27 act on grounds generally applicable to the CALIFORNIA CLASS, making
28

1 appropriate class-wide relief with respect to the CALIFORNIA CLASS
2 as a whole in that DEFENDANT failed to pay all wages due. Including
3 the correct overtime rate, for all worked by the members of the
4 CALIFORNIA CLASS as required by law;

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

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

- 19 1) The interests of the members of the CALIFORNIA CLASS in
20 individually controlling the prosecution or defense of separate
21 actions in that the substantial expense of individual actions will be
22 avoided to recover the relatively small amount of economic losses
23 sustained by the individual CALIFORNIA CLASS Members when
24 compared to the substantial expense and burden of individual
25 prosecution of this litigation;
- 26 2) Class certification will obviate the need for unduly duplicative
27 litigation that would create the risk of:

1 A. Inconsistent or varying adjudications with respect to
2 individual members of the CALIFORNIA CLASS, which
3 would establish incompatible standards of conduct for the
4 DEFENDANT; and/or,

5 B. Adjudications with respect to individual members of the
6 CALIFORNIA CLASS would as a practical matter be
7 dispositive of the interests of the other members not parties
8 to the adjudication or substantially impair or impede their
9 ability to protect their interests;

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

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

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

23 (a) The questions of law and fact common to the CALIFORNIA CLASS
24 predominate over any question affecting only individual CALIFORNIA
25 CLASS Members because the DEFENDANT's employment practices are
26 applied with respect to the CALIFORNIA CLASS;

27 (b) A Class Action is superior to any other available method for the fair and
28

1 efficient adjudication of the claims of the members of the CALIFORNIA
2 CLASS because in the context of employment litigation a substantial
3 number of individual CALIFORNIA CLASS Members will avoid
4 asserting their rights individually out of fear of retaliation or adverse
5 impact on their employment;

6 (c) The members of the CALIFORNIA CLASS are so numerous that it is
7 impractical to bring all members of the CALIFORNIA CLASS before the
8 Court;

9 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
10 able to obtain effective and economic legal redress unless the action is
11 maintained as a Class Action;

12 (e) There is a community of interest in obtaining appropriate legal and
13 equitable relief for the acts of unfair competition, statutory violations and
14 other improprieties, and in obtaining adequate compensation for the
15 damages and injuries which DEFENDANT's actions have inflicted upon
16 the CALIFORNIA CLASS;

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

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

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

25 (i) Class treatment provides manageable judicial treatment calculated to bring
26 a efficient and rapid conclusion to all litigation of all wage and hour
27 related claims arising out of the conduct of DEFENDANT as to the
28

1 members of the CALIFORNIA CLASS.

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

7
8 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 accordingly.

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

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

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

- 11 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
12 overtime compensation to members of the CALIFORNIA LABOR SUB-
13 CLASS in violation of the California Labor Code and California
14 regulations and the applicable California Wage Order;
- 15 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
16 entitled to overtime compensation for overtime worked under the overtime
17 pay requirements of California law;
- 18 (c) Whether DEFENDANT failed to accurately record the applicable
19 overtime rates for all overtime worked PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS;
- 21 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS with legally
23 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 24 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS with accurate
26 itemized wage statements;
- 27 (f) Whether DEFENDANT has engaged in unfair competition by the
28

1 above-listed conduct;

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

4 (h) Whether DEFENDANT's conduct was willful.

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

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

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

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

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

27 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
28

1 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
2 itemized statement in writing showing all accurate and applicable
3 overtime rates in effect during the pay period and the corresponding
4 amount of time worked at each overtime rate by the employee;

5 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
6 the CALIFORNIA LABOR SUB-CLASS members with necessary
7 expenses incurred in the discharge of their job duties; and,

8 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
9 when an employee is discharged or quits from employment, the employer
10 must pay the employee all wages due without abatement, by failing to
11 tender full payment and/or restitution of wages owed or in the manner
12 required by California law to the members of the CALIFORNIA LABOR
13 SUB-CLASS who have terminated their employment.

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

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

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

24 (c) The claims of the representative PLAINTIFF are typical of the claims of
25 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
26 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
27 was a non-exempt employee paid on an hourly basis and paid additional
28

1 non-discretionary incentive wages who was subjected to the
2 DEFENDANT's practice and policy which failed to pay the correct rate
3 of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for
4 all overtime worked. PLAINTIFF sustained economic injury as a result
5 of DEFENDANT's employment practices. PLAINTIFF and the members
6 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
7 identically harmed by the same unlawful, deceptive and unfair
8 misconduct engaged in by DEFENDANT; and,

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

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

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

- 23 1) Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA LABOR SUB-CLASS which
25 would establish incompatible standards of conduct for the parties
26 opposing the CALIFORNIA LABOR SUB-CLASS; or,
27 2) Adjudication with respect to individual members of the
28

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:

1 A. Inconsistent or varying adjudications with respect to
2 individual members of the CALIFORNIA LABOR SUB-
3 CLASS, which would establish incompatible standards of
4 conduct for the DEFENDANT; and/or,

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

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

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

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

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

27 (b) A Class Action is superior to any other available method for the fair and
28

1 efficient adjudication of the claims of the members of the CALIFORNIA
2 LABOR SUB-CLASS because in the context of employment litigation a
3 substantial number of individual CALIFORNIA LABOR SUB-CLASS
4 Members will avoid asserting their rights individually out of fear of
5 retaliation or adverse impact on their employment;

6 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
7 numerous that it is impractical to bring all members of the CALIFORNIA
8 LABOR SUB-CLASS before the Court;

9 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
10 Members, will not be able to obtain effective and economic legal redress
11 unless the action is maintained as a Class Action;

12 (e) There is a community of interest in obtaining appropriate legal and
13 equitable relief for the acts of unfair competition, statutory violations and
14 other improprieties, and in obtaining adequate compensation for the
15 damages and injuries which DEFENDANT's actions have inflicted upon
16 the CALIFORNIA LABOR SUB-CLASS;

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

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

24 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
25 ascertainable from the business records of DEFENDANT. The
26 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
27 CLASS Members classified as non-exempt employees during the
28

CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

47. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code

1 including Sections 204(a), 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, The Fair
2 Labor Standards Act and federal regulations promulgated thereunder, for which this Court
3 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203
4 as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
5 including restitution of wages wrongfully withheld.

6 48. By the conduct alleged herein, DEFENDANT's practices were unlawful and
7 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
8 unscrupulous or substantially injurious to employees, and were without valid justification or
9 utility for which this Court should issue equitable and injunctive relief pursuant to Section
10 17203 of the California Business & Professions Code, including restitution of wages wrongfully
11 withheld.

12 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
13 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
14 members of the CALIFORNIA CLASS, minimum and overtime wages for all time worked,
15 failed to accurately to record the applicable rate of all overtime worked, failed to pay reporting
16 time wages owed, failed to reimburse necessary business expenses incurred, and failed to
17 provide the required amount of overtime compensation due to a miscalculation of the overtime
18 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
19 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
20 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
21 including restitution of wages wrongfully withheld.

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

26 51. By the conduct alleged herein, DEFENDANT's practices were also unfair and
27 deceptive in that DEFENDANT's policies, practices and procedures failed to provide
28

1 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

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

26 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
27 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
28

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

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

10
11 **SECOND CAUSE OF ACTION**

12 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

10 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
11 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
12 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
13 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
15 amount of overtime worked and correct applicable overtime rate for the amount of overtime
16 they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
17 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and
18 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact
19 failed to pay these employees the correct applicable overtime wages for all overtime worked.

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

26 66. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
28

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

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

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

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

19 70. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
20 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
21 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
22 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
23 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
24 to accurately record and pay using the applicable overtime rate as evidenced by
25 DEFENDANT's business records and witnessed by employees.

26 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
27 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28

1 CLASS for the true time they worked, PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
3 injury in amounts which are presently unknown to them and which will be ascertained
4 according to proof at trial.

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

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

19 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
21 interest, statutory costs, as well as the assessment of any statutory penalties against
22 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
23 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
24 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S
25 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
26 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
27 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
28

1 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF
2 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
3 statutory costs.

4
5 **THIRD CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

25 80. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
27 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
28

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

87. 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 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 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.

88. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid 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 minimum wage 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.

///

///

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
28

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.

7
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.

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

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

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

9
10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

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

20 (1) gross wages earned,

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

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

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

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

11 99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
12 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
13 statements which failed to show, among other things, the correct gross and net wages earned
14 and correct amount of time worked. Cal. Lab. Code § 226 provides that every employer shall
15 furnish each of his or her employees with an accurate itemized wage statement in writing
16 showing, among other things, gross wages earned and all applicable hourly rates in effect during
17 the pay period and the corresponding amount of time worked at each hourly rate. Specifically,
18 DEFENDANT violated Section 226 by failing to identify the correct rates of pay and number
19 of hours worked, including for the “Retroactive,” item of pay, which is a wage payment.
20 Aside, from the violations listed above in this paragraph, 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, DEFENDANT from time to time provided PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
24 violated Cal. Lab. Code § 226.

25 100. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
26 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
28

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

9
10 **SEVENTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

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

16 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

25 As used in this article:

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

28 (b) "Labor" includes labor, work, or service whether rendered or performed under

1 contract, subcontract, partnership, station plan, or other agreement if the labor to
2 be paid for is performed personally by the person demanding payment.

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

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

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

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

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

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

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

27 112. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
28 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 **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, Eighth
17 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
18 CLASS as a class 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
28

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 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 §2802.

Dated: November 23, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: _____

Norman B. Blumenthal
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

Dated: November 23, 2020

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff