

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

MARCOS ANTONIOS, on behalf of the State of California,
as a private attorney general, and as an individual, on behalf
of himself and on behalf of all persons similarly situated,

Plaintiff,

vs.

REHABCARE GROUP EAST, LLC, a California Limited
Liability Company; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 21STCV15497

[Consolidated with Case No. 21STCV15647]

**SECOND AMENDED CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
10. VIOLATION OF GOVT. CODE § 12940-HARASSMENT;
11. VIOLATION OF GOVT. CODE § 12940-DISCRIMINATION; and,
12. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§2698, *et seq.*

DEMAND FOR A JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

04/25/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Molinar Deputy

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

4
5 **THE PARTIES**

6 1. Defendant Rehabcare Group East, LLC (“DEFENDANT”) is a California limited
7 liability company that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT provides rehabilitation services. The Company offers physical,
10 occupational, assisted living, and speech-language therapies, including rehabilitation program
11 management, outpatient rehabilitation unit, and wellness and restorative programs.

12 3. PLAINTIFF was employed by DEFENDANT in California from April of 2019
13 to December of 2020 and was at all times classified by DEFENDANT as a non-exempt
14 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
15 payment of minimum and overtime wages due for all time worked.

16 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
17 defined as all individuals who are or previously worked for DEFENDANT in California who
18 were classified as non-exempt (the “CALIFORNIA CLASS”) and who worked during the
19 period April 26, 2017 to November 30, 2020 (the “CALIFORNIA CLASS PERIOD”), and
20 excluding claims for the time period April 26, 2017 to November 30, 2020 for those individuals
21 who worked for DEFENDANT in California during that time period and participated in the
22 *Stonehocker* settlement, California Northern District Case No. 4:19-cv-02494-YGR. The
23 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
24 million dollars (\$5,000,000.00).

25 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
26 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
27 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
28 failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged

1 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
2 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
3 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
4 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
5 the other members of the CALIFORNIA CLASS who have been economically injured by
6 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
7 equitable relief.

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

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

25 26 **THE CONDUCT**

27 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
28 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,

1 meaning the time during which an employee is subject to the control of an employer, including
2 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
3 and CALIFORNIA CLASS Members to work without paying them for all the time they were
4 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
5 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
6 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
7 should have been PLAINTIFF's off-duty meal break. Further, PLAINTIFF and other members
8 of the CALIFORNIA CLASS from time to time were not paid wages for all time worked,
9 including overtime wages, such that in the aggregate employees were underpaid wages as a
10 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
11 employees. DEFENDANT also underpaid sick pay wages to PLAINTIFF and other
12 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of
13 pay. Specifically, PLAINTIFF and other non-exempt employees regularly earn non-
14 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
15 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay
16 to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.
17 DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
18 Members for all time worked, is evidenced by DEFENDANT's business records.

19 9. As a result of their rigorous work schedules, PLAINTIFF and other
20 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
21 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
22 other CALIFORNIA CLASS Members were required from time to time to perform work as
23 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
24 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
25 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
26 which these employees were required by DEFENDANT to work ten (10) hours of work.
27 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
28

1 without additional compensation and in accordance with DEFENDANT's corporate policy and
2 practice.

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

23 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
24 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
25 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
26 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
27 all time worked, meaning the time during which an employee was subject to the control of an
28 employer, including all the time the employee was permitted or suffered to permit this work.

1 DEFENDANT required these employees to work off the clock without paying them for all the
2 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
3 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
4 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
5 Members forfeited time worked by working without their time being accurately recorded and
6 without compensation at the applicable minimum wage and overtime wage rates. To the extent
7 that the time worked off the clock did not qualify for overtime premium payment,
8 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
9 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

10 12. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
11 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
12 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
13 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
14 2802, employers are required to indemnify employees for all expenses incurred in the course
15 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
16 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
17 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
18 directions of the employer, even though unlawful, unless the employee, at the time of obeying
19 the directions, believed them to be unlawful."

20 13. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
21 Members as a business expense, were required by DEFENDANT to use their own personal
22 cellular phones as a result of and in furtherance of their job duties as employees for
23 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
24 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
25 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
26 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
27 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
28 for the benefit of DEFENDANT.

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

14 15. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
15 employment are due and payable twice during each calendar month, on days designated in
16 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
17 requires employers to pay employees all wages owed within eleven (11) days of the close of the
18 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
19 CALIFORNIA CLASS Members all wages owed to them within eleven (11) days of the close
20 of the payroll period.

21 16. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
23 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
24 CALIFORNIA CLASS for missed meal and rest periods. This policy and practice of
25 DEFENDANT is intended to purposefully avoid the payment for all time worked as required
26 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
27 over competitors who complied with the law. To the extent equitable tolling operates to toll
28

1 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
2 PERIOD should be adjusted accordingly.

3 17. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA
4 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
5 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by
6 engaging in a company-wide policy and procedure which failed to accurately calculate and
7 record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA CLASS
8 Members. The proper recording of these employees’ missed meal and rest breaks is the
9 DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of the obligation
10 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
11 compensation for work performed by the members of the CALIFORNIA CLASS and violated
12 the California Labor Code and regulations promulgated thereunder as herein alleged.

13 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
14 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
15 Labor Code and failed to pay her all minimum and overtime wages due to him. DEFENDANT
16 did not have a policy or practice which provided timely off-duty meal and rest breaks to
17 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
18 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
19 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
20 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
21 DEFENDANT’s business records. To date, DEFENDANT has yet to pay PLAINTIFF all of
22 his wages due to him and DEFENDANT has failed to pay any penalty wages owed to him under
23 California Labor Code Section 203. Prior to filing this action, PLAINTIFF exhausted his
24 administrative remedies by filing a timely administrative complaint with the Department of Fair
25 Employment and Housing (“DFEH”) and received a DFEH right-to-sue letter on December 3,
26 2020.

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5

6
7
8
9
0

2.

3
4
5
6
7
8
9
20
21
22
23

24
25
26

27
28

1 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
2 to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS
3 Members, even though DEFENDANT enjoyed the benefit of this work, required employees to
4 perform this work and permits or suffers to permit this work.

5 24. DEFENDANT has the legal burden to establish that each and every
6 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
7 required by California laws. The DEFENDANT, however, as a matter of policy and procedure
8 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in
9 place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid
10 as required by law. This common business practice is applicable to each and every
11 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
12 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as
13 causation, damages, and reliance are not elements of this claim.

14 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 26. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
17 law by:

- 18 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
19 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
20 deceptively having in place company policies, practices and procedures
21 that failed to record and pay PLAINTIFF and the other members of the
22 CALIFORNIA CLASS for all time worked, including minimum wages
23 owed and overtime wages owed for work performed by these employees;
- 24 (b) Committing an act of unfair competition in violation of the UCL, by
25 failing to provide the PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with the legally required meal and rest periods;
27 and,
28

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

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

- 8 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
9 that the joinder of all such persons is impracticable and the disposition of
10 their claims as a class will benefit the parties and the Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this Complaint are common to the CALIFORNIA
13 CLASS will apply to every member of the CALIFORNIA CLASS;
- 14 (c) The claims of the representative PLAINTIFF are typical of the claims of
15 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
16 other members of the CALIFORNIA CLASS, was classified as a non-
17 exempt employee paid on an hourly basis who was subjected to the
18 DEFENDANT's deceptive practice and policy which failed to provide the
19 legally required meal and rest periods to the CALIFORNIA CLASS and
20 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
21 CLASS. PLAINTIFF sustained economic injury as a result of
22 DEFENDANT's employment practices. PLAINTIFF and the members of
23 the CALIFORNIA CLASS were and are similarly or identically harmed
24 by the same unlawful, deceptive, and unfair misconduct engaged in by
25 DEFENDANT; and,
- 26 (d) The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA CLASS, and has retained
28 counsel who are competent and experienced in Class Action litigation.

1 There are no material conflicts between the claims of the representative
2 PLAINTIFF and the members of the CALIFORNIA CLASS that would
3 make class certification inappropriate. Counsel for the CALIFORNIA
4 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
5 Members.

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

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

12 1) Inconsistent or varying adjudications with respect to individual
13 members of the CALIFORNIA CLASS which would establish
14 incompatible standards of conduct for the parties opposing the
15 CALIFORNIA CLASS; and/or,

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

21 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
22 act on grounds generally applicable to the CALIFORNIA CLASS, making
23 appropriate class-wide relief with respect to the CALIFORNIA CLASS
24 as a whole in that DEFENDANT failed to pay all wages due to members
25 of the CALIFORNIA CLASS as required by law;

26 1) With respect to the First Cause of Action, the final relief on behalf
27 of the CALIFORNIA CLASS sought does not relate exclusively to
28 restitution because through this claim PLAINTIFF seeks

1 declaratory relief holding that the DEFENDANT's policy and
2 practices constitute unfair competition, along with declaratory
3 relief, injunctive relief, and incidental equitable relief as may be
4 necessary to prevent and remedy the conduct declared to constitute
5 unfair competition;

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

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

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

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

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA CLASS would as a practical matter be
27 dispositive of the interests of the other members not parties
28

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

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

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

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

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

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

26 (c) The members of the CALIFORNIA CLASS are so numerous that it is
27 impractical to bring all members of the CALIFORNIA CLASS before the
28 Court;

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

21 30. DEFENDANT maintains records from which the Court can ascertain and identify
22 by job title each of DEFENDANT's employees who have been intentionally subjected to
23 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will
24 seek leave to amend the Complaint to include any additional job titles of similarly situated
25 employees when they have been identified.

26 ///

27 ///

28 ///

THE CALIFORNIA LABOR SUB-CLASS

31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the “CALIFORNIA LABOR SUB-CLASS”) and who worked during the period April 26, 2017 to November 30, 2020 (the “CALIFORNIA LABOR SUB-CLASS PERIOD”), and excluding claims for the time period April 26, 2017 to November 30, 2020 for those individuals who worked for DEFENDANT in California during that time period and participated in the *Stonehocker* settlement, California Northern District Case No. 4:19-cv-02494-YGR, pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 5 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
6 compensation due to members of the CALIFORNIA LABOR SUB-
7 CLASS for missed meal and rest breaks in violation of the California
8 Labor Code and California regulations and the applicable California Wage
9 Order;
- 10 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
11 members of the CALIFORNIA LABOR SUB-CLASS with accurate
12 itemized wage statements;
- 13 (c) Whether DEFENDANT has engaged in unfair competition by the
14 above-listed conduct;
- 15 (d) The proper measure of damages and penalties owed to the members of the
16 CALIFORNIA LABOR SUB-CLASS; and,
- 17 (e) Whether DEFENDANT's conduct was willful.

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

- 20 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
21 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
22 CLASS all wages due for overtime worked, for which DEFENDANT is
23 liable pursuant to Cal. Lab. Code § 1194;
- 24 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
25 accurately pay PLAINTIFF and the members of the CALIFORNIA
26 LABOR SUB-CLASS the correct minimum wage pay for which
27 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

- 1 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
3 itemized statement in writing showing the corresponding correct amount
4 of wages earned by the employee;
- 5 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
8 meal breaks and the legally required off-duty rest breaks;
- 9 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
10 when an employee is discharged or quits from employment, the employer
11 must pay the employee all wages due without abatement, by failing to
12 tender full payment and/or restitution of wages owed or in the manner
13 required by California law to the members of the CALIFORNIA LABOR
14 SUB-CLASS who have terminated their employment; and,
- 15 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
16 the CALIFORNIA LABOR SUB-CLASS members with necessary
17 expenses incurred in the discharge of their job duties.

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

- 20 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
21 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
22 Members is impracticable and the disposition of their claims as a class
23 will benefit the parties and the Court;
- 24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
25 that are raised in this Complaint are common to the CALIFORNIA
26 LABOR SUB-CLASS and will apply to every member of the
27 CALIFORNIA LABOR SUB-CLASS;
- 28

- 1 (c) The claims of the representative PLAINTIFF are typical of the claims of
2 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
3 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
4 was a non-exempt employee paid on an hourly basis who was subjected
5 to the DEFENDANT's practice and policy which failed to pay the correct
6 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
7 PLAINTIFF sustained economic injury as a result of DEFENDANT's
8 employment practices. PLAINTIFF and the members of the
9 CALIFORNIA LABOR SUB-CLASS were and are similarly or
10 identically harmed by the same unlawful, deceptive, and unfair
11 misconduct engaged in by DEFENDANT; and,
- 12 (d) The representative PLAINTIFF will fairly and adequately represent and
13 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
14 retained counsel who are competent and experienced in Class Action
15 litigation. There are no material conflicts between the claims of the
16 representative PLAINTIFF and the members of the CALIFORNIA
17 LABOR SUB-CLASS that would make class certification inappropriate.
18 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
19 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

- 22 (a) Without class certification and determination of declaratory, injunctive,
23 statutory and other legal questions within the class format, prosecution of
24 separate actions by individual members of the CALIFORNIA LABOR
25 SUB-CLASS will create the risk of:
- 26 1) Inconsistent or varying adjudications with respect to individual
27 members of the CALIFORNIA LABOR SUB-CLASS which
28

1 would establish incompatible standards of conduct for the parties
2 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

22 1) The interests of the members of the CALIFORNIA LABOR SUB-
23 CLASS in individually controlling the prosecution or defense of
24 separate actions in that the substantial expense of individual
25 actions will be avoided to recover the relatively small amount of
26 economic losses sustained by the individual CALIFORNIA
27
28

LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members who worked for DEFENDANT in California at any
5 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
6 (i) Class treatment provides manageable judicial treatment calculated to bring
7 a efficient and rapid conclusion to all litigation of all wage and hour
8 related claims arising out of the conduct of DEFENDANT as to the
9 members of the CALIFORNIA LABOR SUB-CLASS.

10
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

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

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

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

20 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
21 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
22 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
23 competition as follows:

24 Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction. The court
26 may make such orders or judgments, including the appointment of a receiver, as
27 may be necessary to prevent the use or employment by any person of any practice
28 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.

1 Cal. Bus. & Prof. Code § 17203.

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

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

16 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
17 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
18 members of the CALIFORNIA CLASS, Fair Labor Standards Act wages due for overtime
19 worked as a result of failing to include incentive compensation into their regular rates for
20 purposes of computing overtime pay, failed to provide the legally mandated meal and rest
21 periods, the required amount of compensation for missed meal and rest periods and overtime
22 and minimum wages owed, failed to timely pay wages, and failed to reimburse all necessary
23 business expenses incurred, due to a business practice that cannot be justified, pursuant to the
24 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
25 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
26 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
27 withheld.
28

1 46. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
2 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with
4 DEFENDANT.

5 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
6 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
7 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
8 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

9 48. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
10 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
11 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
12 for each workday in which a second off-duty meal period was not timely provided for each ten
13 (10) hours of work.

14 49. PLAINTIFF further demands on behalf of himself and each member of the
15 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
16 duty paid rest period was not timely provided as required by law.

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

23 51. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California
25 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
26 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
27 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

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

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

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

17
18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Minimum Wages**

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

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

22 **and Against All Defendants)**

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

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

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
2 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
3 Members.

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

6 58. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less wage than
8 the minimum so fixed is unlawful.

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

11 60. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
13 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
14 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS.

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

20 62. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately calculated the correct time worked and consequently underpaid the actual time
22 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
23 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
24 benefits in violation of the California Labor Code, the Industrial Welfare Commission
25 requirements and other applicable laws and regulations.

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

4 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
5 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
6 Members to work without paying them for all the time they were under DEFENDANT's
7 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
9 were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

14
15 **THIRD CAUSE OF ACTION**

16 **For Failure To Pay Overtime Compensation**

17 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

23 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
26 these employees for all overtime worked, including, work performed in excess of eight (8)
27
28

1 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
2 workweek.

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

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

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

13 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
14 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
15 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
16 including overtime work.

17 75. DEFENDANT's unlawful wage and hour practices manifested, without
18 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
19 implementing a policy and practice that failed to accurately record overtime worked by
20 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
21 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
23 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
24 workweek.

25 76. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
27 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
28

1 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
2 of the California Labor Code, the Industrial Welfare Commission requirements and other
3 applicable laws and regulations.

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

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

15 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
17 worked that they are entitled to, constituting a failure to pay all earned wages..

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

25 81. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
26 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
28

1 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
2 injury in amounts which are presently unknown to them and which will be ascertained
3 according to proof at trial.

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

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

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

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

3
4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

12 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
13 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
14 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
15 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
16 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
17 duties for the legally required off-duty meal periods. As a result of their rigorous work
18 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
19 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
20 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
21 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
22 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
23 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
24 in some workdays in which these employees were required by DEFENDANT to work ten (10)
25 hours of work from time to time. As a result, PLAINTIFF and other members of the
26 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
27 compensation and in accordance with DEFENDANT's corporate policy and practice.
28

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

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

10
11 **FIFTH CAUSE OF ACTION**

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

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

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

16 89. 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 90. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
20 time to time required to work in excess of four (4) hours without being provided ten (10) minute
21 rest periods. Further, these employees from time to time were denied their first rest periods of
22 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
23 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
24 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
25 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
26 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
27 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
28

1 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
2 periods by DEFENDANT and DEFENDANT's managers.

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

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

12
13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 2802]**

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

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

21 94. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

25 95. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
26 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
27 CLASS members for required expenses incurred in the discharge of their job duties for
28

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

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

20
21 **SEVENTH CAUSE OF ACTION**

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

23 **[Cal. Lab. Code § 226]**

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

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

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

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

21 99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
22 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
23 wage statements which failed to show, among other things, the correct gross and net wages
24 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
25 employees with an accurate itemized wage statement in writing showing, among other
26 things, gross wages earned and all applicable hourly rates in effect during the pay period and
27 the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT
28 violated Section 226 by failing to identify the correct rates of pay, including for the “Regular
Retro” item of pay, which was a wage payment. Aside, from the violations listed above in
this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement
that lists all the requirements under California Labor Code 226 *et seq.* As a result,
DEFENDANT from time to time provided PLAINTIFF and the other members of the
CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
§ 226.

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

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

11
12 **EIGHTH CAUSE OF ACTION**

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

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

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

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

20 102. Cal. Lab. Code § 200 provides that:

21 As used in this article:

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

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

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

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

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

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

17 106. Cal. Lab. Code § 203 provides:

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

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

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

33 ///

34 ///

1 **NINTH CAUSE OF ACTION**

2 **For Wrongful Termination in Violation of Public Policy**

3 **(By PLAINTIFF Against All Defendants)**

4 109. PLAINTIFF realleges and incorporate by this reference, as though fully set
5 forth herein, the prior paragraphs of this Complaint.

6 110. PLAINTIFF's wrongful termination in November of 2020 was for a pretextual
7 reason(s) to disguise DEFENDANT's unlawful employment practices directed at
8 PLAINTIFF.

9 111. Within the State of California there exists a substantial and fundamental public
10 policy, set forth in the California Government Code §12900 et seq., which forbids religious
11 and/or national origin harassment/racial discrimination, retaliation, and wrongful
12 termination. Unlawful harassment includes the right to be free from unwanted, offensive
13 racial harassment, and the right to protest such conduct without fear of retaliation or further
14 harm. This public policy of the state is one that benefits the public at large and guarantees
15 the rights of an employee to perform their work free from racial
16 harassment/discrimination/retaliation.

17 112. The motivating reason(s) for PLAINTIFF's termination were religious and/or
18 national origin harassment/ discrimination and PLAINTIFF's protests and/or resistance
19 thereof. PLAINTIFF's discharge from his position of employment was in violation of the
20 public policies of the State of California.

21 113. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial
22 losses in earnings and employment benefits and emotional distress in an amount to be
23 determined according to proof at trial.

24 114. In doing the acts herein alleged, DEFENDANT acted with malice and
25 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is
26 entitled to exemplary and punitive damages from DEFENDANT in an amount to be
27 determined to punish DEFENDANT and to deter such wrongful conduct in the future.
28

TENTH CAUSE OF ACTION
For Violation of Government Code §12940 et seq.

Harassment/Discrimination
(By PLAINTIFF Against All Defendants)

115. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

116. PLAINTIFF, at all relevant times, had the right to work in an environment free of religious creed and/or national origin harassment/discrimination.

117. In the State of California, the legislature has enacted Government Code §12940(j)(1) which forbids religious creed and/or national origin harassment, and imposes several affirmative duties upon the employer to ensure employees are not subjected to unlawful religious creed and/or national origin harassment at work. DEFENDANT directed its offensive, unwelcome, religious creed and/or national origin misconduct toward PLAINTIFF because of PLAINTIFF's affiliation as Jewish.

118. PLAINTIFF was subjected to unwelcome harassment.

119. The harassing conduct was severe or pervasive.

120. A reasonable Jewish person in PLAINTIFF's circumstances would have considered the work environment to be hostile or abusive.

121. PLAINTIFF considered his work environment to be hostile or abusive.

122. DEFENDANT's managers and/or supervisors engaged in the wrongful conduct.

123. The foregoing conduct by DEFENDANT constitutes unlawful religious creed and/or national origin harassment, and created a hostile, abusive and discriminatory work environment and disrupted PLAINTIFF's emotional tranquility in the workplace and altered the terms or conditions of his employment.

124. DEFENDANT's conduct, as set forth and alleged herein, constitutes a violation of Government Code §12940 *et seq.* which prohibits racial harassment by an

1 employer, manager, supervisor, co-worker or vendor, et al.

2 125. As a result of DEFENDANT's actions and the substantial motivating reason
3 for said actions was religious creed and/or national origin harassment/discrimination,
4 PLAINTIFF has suffered, substantial losses in earnings upon his wrongful termination and
5 employment benefits and emotional distress in an amount to be determined according to
6 proof at trial. PLAINTIFF is further entitled to attorney's fees and costs of suit pursuant to
7 Government Code §12900 *et seq.*

8 126. In doing the acts herein alleged, DEFENDANT acted with malice and
9 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is
10 entitled to exemplary and punitive damages from DEFENDANT in an amount to be
11 determined to punish DEFENDANT and to deter such wrongful conduct in the future.
12

13 **ELEVENTH CAUSE OF ACTION**
14 **For Violation of Government Code §12940(a) - Racial Discrimination**
15 **(By PLAINTIFF Against All Defendants)**

16 127. PLAINTIFF realleges and incorporate by this reference, as though fully set
17 forth herein, the prior paragraphs of this Complaint.

18 128. PLAINTIFF was employed by DEFENDANT.

19 129. DEFENDANT is an employer covered by Government Code §12940 *et seq.*

20 130. PLAINTIFF was terminated from her employment and/or suffered other
21 adverse employment actions.

22 131. PLAINTIFF's religious creed and/or National Origin was a substantial
23 motivating reason(s) for his termination and other adverse employment actions.

24 132. As a result of DEFENDANT's conduct, PLAINTIFF has suffered substantial
25 losses in earnings and employment benefits and emotional distress in an amount to be
26 determined according to proof at trial.

27 133. In doing the acts herein alleged, DEFENDANT acted with malice and
28

1 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is
2 entitled to exemplary and punitive damages from DEFENDANT in an amount to be punish
3 DEFENDANT and to deter such wrongful conduct in the future.
4

5 **TWELFTH CAUSE OF ACTION**

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

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

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

9 134. PLAINTIFF incorporates by reference, as though fully set forth herein, the
10 prior paragraphs of this Complaint.

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

21 136. PLAINTIFF, and such persons that may be added from time to time who
22 satisfy the requirements and exhaust the administrative procedures under the Private
23 Attorney General Act, brings this Representative Action on behalf of the State of California
24 with respect to himself and all individuals who worked for DEFENDANT in California
25 who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
26 time period December 4, 2019 to November 30, 2020 (the "PAGA PERIOD"), and
27 excluding any claims for the time period April 26, 2017 to November 30, 2020 for those
28

1 individuals who worked for DEFENDANT in California during that time period and
2 participated in the *Stonehocker* settlement, California Northern District Case No. 4:19-cv-
3 02494-YGR.

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

12 138. The policies, acts and practices heretofore described were and are an
13 unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFF
14 and the other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
15 properly record and provide legally required meal and rest periods, (c) failed to pay
16 overtime wages, (d) failed to pay minimum wages, (e) failed to reimburse for required
17 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
18 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351,
19 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of
20 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial
21 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹
22 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
23 Private Attorney General Act of 2004 as the representative of the State of California for the
24 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

25 139. All of the conduct and violations alleged herein occurred during the PAGA
26

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

1 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
2 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
3 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
4 2018AJDAR 12157 (Certified for Publication 12/19/18).
5

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly
9 and severally, as follows:
10

11 1. On behalf of the CALIFORNIA CLASS:

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

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

- 26 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh
27 and Eighth Causes of Action asserted by the CALIFORNIA LABOR
28 SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- 1 B) Compensatory damages, according to proof at trial, including
2 compensatory damages for minimum and overtime compensation due
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
5 PERIOD plus interest thereon at the statutory rate;
6
7 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
8 period in which a violation occurs and one hundred dollars (\$100) per
9 each member of the CALIFORNIA LABOR SUB-CLASS for each
10 violation in a subsequent pay period, not exceeding an aggregate penalty
11 of four thousand dollars (\$4,000), and an award of costs for violation of
12 Cal. Lab. Code § 226;
13
14 D) The wages of all terminated employees from the CALIFORNIA LABOR
15 SUB-CLASS as a penalty from the due date thereof at the same rate until
16 paid or until an action therefore is commenced, in accordance with Cal.
17 Lab. Code § 203;
18
19 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
20 512 and the applicable IWC Wage Order;
21
22 F) The amount of the expenses PLAINTIFF and each member of the
23 CALIFORNIA LABOR SUBCLASS incurred in the course of their job
24 duties, plus interest, and costs of suit; and,
25
26 G) For liquidated damages pursuant to California Labor Code Sections
27 1194.2 and 1197.
28

3. On behalf of the Ninth, Tenth and Eleventh Causes of Action:

- A) For all special damages which were sustained as a result of
DEFENDANT's conduct, including, but not limited to, back pay, front
pay, lost compensation and job benefits that PLAINTIFF would have
received but for the retaliatory practices of DEFENDANT; and,

1 B) For all exemplary damages, according to proof, which were sustained as
2 a result of DEFENDANT's conduct.

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

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

8 5. On all claims:

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

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

11 C) An award of penalties, attorneys' fees and cost of suit, as allowable under
12 the law, including, but not limited to, pursuant to Labor Code §226,
13 §1194, and/or §2802.

14 Dated: April 25, 2023

15 BLUMENTHAL NORDREHAUG BHOWMIK
16 DE BLOUW LLP

17 By: /s/ Norman B. Blumenthal
18 Norman B. Blumenthal
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

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: April 25, 2023 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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