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

13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 DARBY ROMIN, an individual, on behalf
15 of himself and on behalf of all persons
16 similarly situated,

17 Plaintiff,

18 vs.

19 STERLING BV, INC., a Corporation; and
20 DOES 1 through 50, inclusive,

21 Defendants.

Case No. **21STCV17197**

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO 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;
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

22 DEMAND FOR A JURY TRIAL

By Fax

1 Plaintiff Darby Romin (“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 Sterling BV, Inc. (“DEFENDANT”) is a corporation that at all relevant
7 times mentioned herein conducted and continues to conduct substantial business in the state of
8 California.

9 2. DEFENDANT develops speciality bakery products. Founded in 1971,
10 DEFENDANT produces shelf-stable, frozen and fresh products at their warehouses in
11 California and Texas.

12 3. PLAINTIFF was employed by DEFENDANT in California from January of 2019
13 to March of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
15 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 were employed by DEFENDANT in California
18 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
19 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
20 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
21 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
22 (\$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. DEFENDANT’s policy and practice alleged
27 herein is an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
28 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA

1 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
2 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
3 the other members of the CALIFORNIA CLASS who have been economically injured by
4 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
5 equitable relief.

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

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

23 24 **THE CONDUCT**

25 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
26 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. Prior to clocking in for a shift, PLAINTIFF and other
3 CALIFORNIA CLASS Members were required to put on their work uniforms, shoes, hairnets,
4 shirts, safety goggles, masks, face shields, and gloves. Additionally, DEFENDANT engaged
5 in the practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to perform work
6 off the clock in that DEFENDANT, as a condition of employment, required these employees
7 to wait in line and submit to mandatory temperature checks for COVID-19 screening prior to
8 clocking into DEFENDANT's timekeeping system for the workday. PLAINTIFF and other
9 CALIFORNIA CLASS Members are not paid for their work time putting on their work gear
10 because they are not paid until they are on the production line at their scheduled start times.
11 PLAINTIFF and other CALIFORNIA CLASS Members were also required to remove their
12 work gear after their scheduled stop times at the end of their scheduled shifts. DEFENDANT,
13 as a matter of established company policy and procedure, administered a uniform practice of
14 rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS
15 Members, always to the benefit of DEFENDANT, so that during the course of their
16 employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would
17 have been paid had they been paid for actual recorded time rather than "rounded" time.
18 DEFENDANT'S policy of rounding ensures that PLAINTIFF and CALIFORNIA CLASS
19 Members are not paid for time donning and doffing their work gear because PLAINTIFF and
20 CALIFORNIA CLASS Members are not paid until they are wearing their work uniforms and
21 protective gear, at their assigned station, at their assigned start time and their paid work time
22 ends at their scheduled shift end time, at which point PLAINTIFF and other CALIFORNIA
23 CLASS Members are permitted to remove their work gear and clock out. Therefore,
24 PLAINTIFF and other CALIFORNIA CLASS Members are not paid for their time donning and
25 doffing their work gear because their pay starts and stops immediately at their scheduled start
26 and stop time. Additionally, during the CALIFORNIA CLASS PERIOD, DEFENDANT
27 engaged in the practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to
28 perform work off the clock prior to clocking into DEFENDANT's timekeeping system, in that

1 DEFENDANT, as a condition of employment, requires these employees to wait for and submit
2 to loss prevention inspections, waiting in line in order to pass through DEFENDANT's security
3 checkpoints after clocking out for meal breaks and before and at the end of each scheduled shift
4 for which DEFENDANT did not provide compensation for time spent waiting for and
5 submitting to DEFENDANT's loss prevention inspections off the clock. Finally, from time to
6 time DEFENDANT required PLAINTIFF to work while clocked out during what was supposed
7 to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
8 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
9 break. DEFENDANT's policy and practice to not pay employees for compensable work time
10 is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other
11 CALIFORNIA CLASS Members forfeited minimum wage and overtime wage compensation
12 by working without their time being correctly recorded and without compensation at the
13 applicable rates.

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

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

1 CLASS Members must be included in the “regular rate of pay.” DEFENDANT also underpaid
2 sick pay wages to PLAINTIFF and other CALIFORNIA CLASS Members by failing to pay
3 such wages at the regular rate of pay. Specifically, PLAINTIFF and other non-exempt
4 employees regularly earn non-discretionary remuneration, including but not limited to,
5 incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of
6 pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
7 Members at their base rates of pay. The failure to do so has resulted in an underpayment of
8 overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by
9 DEFENDANT.

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

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

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

14 13. DEFENDANT also failed to provide PLAINTIFF and the other members of the
15 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
16 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
17 every employer shall furnish each of his or her employees with an accurate itemized wage
18 statement in writing showing, among other things, gross wages earned and all applicable hourly
19 rates in effect during the pay period and the corresponding amount of time worked at each
20 hourly rate. PLAINTIFF and CALIFORNIA CLASS Members are paid on an hourly basis. As
21 such, the wage statements should reflect all applicable hourly rates during the pay period and
22 the total hours worked, and the applicable pay period in which the wages were earned pursuant
23 to California Labor Code Section 226(a). The wage statements DEFENDANT provided to
24 PLAINTIFF and other CALIFORNIA CLASS Members failed to identify such information.
25 Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
26 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
27 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of
28 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

1 14. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
4 requires employers to pay employees all wages owed within seven (7) days of the close of the
5 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
6 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
7 the payroll period.

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

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

27 17. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT

1 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
2 CALIFORNIA CLASS for missed meal and rest periods. This policy and practice of
3 DEFENDANT is intended to purposefully avoid the payment for all time worked as required
4 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
5 over competitors who complied with the law. To the extent equitable tolling operates to toll
6 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
7 PERIOD should be adjusted accordingly.

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

19 19. Specifically as to PLAINTIFF, DEFENDANT failed to provide all minimum
20 wages and overtime wages due to him for the off the clock work described herein and failed to
21 provide all the legally required off-duty meal and rest breaks to him as required by the
22 applicable Wage Order and Labor Code. DEFENDANT did not have a policy or practice which
23 provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to compensate
24 PLAINTIFF for his missed meal and rest breaks. The nature of the work performed by the
25 PLAINTIFF did not prevent him from being relieved of all of his duties for the legally required
26 off-duty meal periods. As a result, DEFENDANT’s failure to provide PLAINTIFF with the
27 legally required meal periods is evidenced by DEFENDANT’s business records. DEFENDANT
28 also required PLAINTIFF to work off the clock without paying him for all the time he was

1 working for DEFENDANT.

2 20. In December of 2020, and continuing throughout the rest of PLAINTIFF's
3 employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of
4 DEFENDANT's illegal employment practices, including, but not limited to, DEFENDANT's
5 failure to follow the California Labor Code and failure to pay PLAINTIFF correctly.
6 PLAINTIFF initiated this action by sending a Private Attorney General Act Notice in December
7 of 2020 informing DEFENDANT of the violations outlined in this Complaint and
8 PLAINTIFF's intent on bringing a lawsuit for the violations of the California Labor Code stated
9 in the December 3, 2020 PAGA Notice that was sent to DEFENDANT via certified mail.

10 21. Subsequent to PLAINTIFF's participation in protective activity by complaining
11 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
12 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
13 DEFENDANT terminated PLAINTIFF's employment with RESPONDENT in March of 2020.
14 As a result, there is a causal link between the protected activity and DEFENDANT's decision
15 to terminate PLAINTIFF's employment, which is against public policy. As a direct
16 consequence of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated against
17 PLAINTIFF by terminating PLAINTIFF's employment in March of 2020.

18 19 20 **JURISDICTION AND VENUE**

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

25 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
27 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
28 offices and facilities in this County and/or conducts substantial business in this County, and (ii)

1 committed the wrongful conduct herein alleged in this County against members of the
2 CALIFORNIA CLASS.

3
4 **THE CALIFORNIA CLASS**

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

14 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA
15 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
16 accordingly.

17 26. 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, engages in a practice whereby DEFENDANT fails
20 to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS
21 Members, even though DEFENDANT enjoys the benefit of this work, requires employees to
22 perform this work and permits or suffers to permit this work.

23 27. DEFENDANT has the legal burden to establish that each and every
24 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
25 required by California laws. The DEFENDANT, however, failed to have in place during the
26 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure
27 that each and every CALIFORNIA CLASS Member is paid as required by law. This common
28 business practice is applicable to each and every CALIFORNIA CLASS Member can be

1 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
2 Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not
3 elements of this claim.

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

6 29. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
7 law by:

- 8 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
9 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
10 deceptively having in place company policies, practices and procedures
11 that failed to record and pay PLAINTIFF and the other members of the
12 CALIFORNIA CLASS for all time worked minimum wages owed and
13 overtime wages owed for work performed by these employees;
- 14 (b) Committing an act of unfair competition in violation of the UCL, by
15 failing to provide the PLAINTIFF and the other members of the
16 CALIFORNIA CLASS with the legally required meal and rest periods;
17 and,
- 18 (c) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
20 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
21 the CALIFORNIA CLASS members with necessary expenses incurred in
22 the discharge of their job duties.

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

- 25 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
26 that the joinder of all such persons is impracticable and the disposition of
27 their claims as a class will benefit the parties and the Court;
- 28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CALIFORNIA
2 CLASS will apply to every member of the CALIFORNIA CLASS;

3 (c) The claims of the representative PLAINTIFF are typical of the claims of
4 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
5 other members of the CALIFORNIA CLASS, is classified as a non-
6 exempt employee paid on an hourly basis who has been subjected to the
7 DEFENDANT's deceptive practice and policy which failed to provide the
8 legally required meal and rest periods to the CALIFORNIA CLASS and
9 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
10 CLASS. PLAINTIFF sustained economic injury as a result of
11 DEFENDANT's employment practices. PLAINTIFF and the members of
12 the CALIFORNIA CLASS were and are similarly or identically harmed
13 by the same unlawful, deceptive and unfair misconduct engaged in by
14 DEFENDANT; and,

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

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

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

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA 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 CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;
- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- (c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

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

1 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 to the CALIFORNIA CLASS, thereby making final class-wide relief
2 appropriate with respect to the CALIFORNIA CLASS as a whole;

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

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

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

14
15 **THE CALIFORNIA LABOR SUB-CLASS**

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

24 35. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
25 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
26 law, intentionally, knowingly, and wilfully, engages in a practice whereby DEFENDANT fails
27 to correctly calculate compensation for the time worked by PLAINTIFF and the other members
28 of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these

1 employees, even though DEFENDANT enjoys the benefit of this work, requires employees to
2 perform this work and permits or suffers to permit this work. DEFENDANT has denied these
3 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
4 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
5 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
6 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 16 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
17 compensation due to members of the CALIFORNIA LABOR SUB-
18 CLASS for missed meal and rest breaks in violation of the California
19 Labor Code and California regulations and the applicable California Wage
20 Order;
- 21 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS with accurate
23 itemized wage statements;
- 24 (c) Whether DEFENDANT has engaged in unfair competition by the
25 above-listed conduct;
- 26 (d) The proper measure of damages and penalties owed to the members of the
27 CALIFORNIA LABOR SUB-CLASS; and,
- 28 (e) Whether DEFENDANT's conduct was willful.

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

- 3 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
4 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
5 CLASS all wages due for overtime worked, for which DEFENDANT is
6 liable pursuant to Cal. Lab. Code § 1194;
- 7 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
8 accurately pay PLAINTIFF and the members of the CALIFORNIA
9 LABOR SUB-CLASS the correct minimum wage pay for which
10 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 11 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
12 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
13 itemized statement in writing showing the corresponding correct amount
14 of wages earned by the employee; and,
- 15 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
16 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
17 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
18 meal breaks and the legally required off-duty rest breaks;
- 19 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
20 the CALIFORNIA LABOR SUB-CLASS members with necessary
21 expenses incurred in the discharge of their job duties.

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

- 24 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
25 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
26 Members is impracticable and the disposition of their claims as a class
27 will benefit the parties and the Court;
- 28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CALIFORNIA
2 LABOR SUB-CLASS and will apply to every member of the
3 CALIFORNIA LABOR SUB-CLASS;

4 (c) The claims of the representative PLAINTIFF are typical of the claims of
5 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
6 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
7 is a non-exempt employee paid on an hourly basis who has been subjected
8 to the DEFENDANT's practice and policy which fails to pay the correct
9 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
10 PLAINTIFF sustained economic injury as a result of DEFENDANT's
11 employment practices. PLAINTIFF and the members of the
12 CALIFORNIA LABOR SUB-CLASS were and are similarly or
13 identically harmed by the same unlawful, deceptive and unfair
14 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

4) A class action is superior to other available methods for the fair 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.

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

(a) The questions of law and fact common to the CALIFORNIA LABOR

1 SUB-CLASS predominate over any question affecting only individual
2 CALIFORNIA LABOR SUB-CLASS Members;

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

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

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

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

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

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

27 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
28 ascertainable from the business records of DEFENDANT. The

CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the 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)

43. 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.

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

45. 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.

46. 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

1 applicable Industrial Wage Order(s), the California Code of Regulations and the California
2 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198
3 & 2802, The Fair Labor Standards Act and federal regulations promulgated thereunder, for
4 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
5 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
6 unfair competition, including restitution of wages wrongfully withheld.

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

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

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

27 50. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
28 and deceptive in that DEFENDANT's policies, practices and procedures fail to provide all

1 legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
2 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

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 57. 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 Minimum Wages**

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

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

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

19 59. 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 and pay reporting time and minimum wages to PLAINTIFF and
23 CALIFORNIA CLASS Members.

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

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

1 62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
2 including reporting time pay and minimum wage compensation and interest thereon, together
3 with the costs of suit.

4 63. DEFENDANT maintains a wage practice of paying PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
6 time they work. As set forth herein, DEFENDANT's policy and practice is to unlawfully and
7 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
8 CALIFORNIA LABOR SUB-CLASS.

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

13 65. In committing these violations of the California Labor Code, DEFENDANT
14 inaccurately calculates the correct time worked and consequently underpays the actual time
15 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
16 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
17 benefits in violation of the California Labor Code, the Industrial Welfare Commission
18 requirements and other applicable laws and regulations.

19 66. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive
21 the correct reporting time pay and minimum wage compensation for their time worked for
22 DEFENDANT.

23 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
24 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked that
25 they are entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to
26 accurately pay the PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS the
27 wages for the time they work in accordance with 1197 & 1197.1, even though the PLAINTIFF
28 and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly required,

1 permitted or suffered to work, and do in fact work, off the clock time as to which
2 DEFENDANT fails to accurately record and pay as evidenced by DEFENDANT's business
3 records and witnessed by employees.

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

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

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

24 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
26 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
27 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
28 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other

1 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

2
3 **THIRD CAUSE OF ACTION**

4 **For Failure To Pay Overtime Compensation**

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

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

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

11 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
13 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
14 these employees for all overtime worked, including, work performed in excess of eight (8)
15 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
16 workweek.

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

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

23 76. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
24 including reporting time pay and minimum wage and overtime compensation and interest
25 thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the
26 employment of an employee for longer hours than those fixed by the Industrial Welfare
27 Commission is unlawful.

28 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and

1 CALIFORNIA LABOR SUB-CLASS Members are required by DEFENDANT to work for
2 DEFENDANT and are not paid for all the time they work, including overtime work.

3 78. 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 failed to accurately record overtime work by
6 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
7 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
8 CLASS for overtime work, including, the overtime work performed in excess of eight (8) hours
9 in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

10 79. In committing these violations of the California Labor Code, DEFENDANT
11 inaccurately records overtime worked and consequently underpays the overtime worked by
12 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
13 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
14 of the California Labor Code, the Industrial Welfare Commission requirements and other
15 applicable laws and regulations.

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

20 81. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
21 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not
22 receiving full compensation for overtime worked.

23 82. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
24 from the overtime requirements of the law. None of these exemptions are applicable to the
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
27 to a valid collective bargaining agreement that would preclude the causes of action contained
28 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the

1 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
2 non-waiveable rights provided by the State of California.

3 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
4 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for overtime worked
5 that they are entitled to, constituting a failure to pay all earned wages.

6 84. DEFENDANT fails to accurately pay the PLAINTIFF and the other members of
7 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
8 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
9 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS are required to work, and did in fact work, overtime as to which DEFENDANT fails
11 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed
12 by employees.

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

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

25 87. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
27 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
28 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and

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

5 88. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
7 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
8 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
9 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
10 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

11
12 **FOURTH CAUSE OF ACTION**

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

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

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

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

20 90. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
21 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
22 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
23 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
24 does not prevent these employees from being relieved of all of their duties for the legally
25 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and
26 other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved
27 of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to
28 provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally

1 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
2 business records. Further, DEFENDANT fails to provide PLAINTIFF and CALIFORNIA
3 CLASS Members with a second off-duty meal period in some workdays in which these
4 employees were required by DEFENDANT to work ten (10) hours of work. As a result,
5 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeit
6 meal breaks without additional compensation and in accordance with DEFENDANT's
7 corporate policy and practice.

8 91. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
9 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
10 CLASS Members who are not provided a meal period, in accordance with the applicable Wage
11 Order, one additional hour of compensation at each employee's regular rate of pay for each
12 workday that a meal period was not provided.

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

17
18 **FIFTH CAUSE OF ACTION**

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

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

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

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

26 94. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are
27 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
28 Further, these employees were denied their first rest periods of at least ten (10) minutes for

1 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least
2 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
3 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
4 or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not
5 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
6 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied
7 their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

17 18 **SIXTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 226]**

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

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

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

28 (1) gross wages earned,

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

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

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

(5) net wages earned,

(6) the inclusive dates of the period for which the employee is paid,

(7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

(8) the name and address of the legal entity that is the employer, and

(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

99. DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS

1 Members failed to identify such information. Aside, from the violations listed above,
2 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
3 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
4 time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
5 with wage statements which violated Cal. Lab. Code § 226.

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

17 18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 2802]**

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

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

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

27 An employer shall indemnify his or her employee for all necessary
28 expenditures or losses incurred by the employee in direct consequence of the
discharge of his or her duties, or of his or her obedience to the directions of

1 the employer, even though unlawful, unless the employee, at the time of
2 obeying the directions, believed them to be unlawful.

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

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

25 ///

26 ///

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

10 As used in this article:

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

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

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

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

22 If an employee not having a written contract for a definite period quits his or
23 her employment, his or her wages shall become due and payable not later than
24 72 hours thereafter, unless the employee has given 72 hours previous notice of
25 his or her intention to quit, in which case the employee is entitled to his or her
26 wages at the time of quitting. Notwithstanding any other provision of law, an
27 employee who quits without providing a 72-hour notice shall be entitled to
28 receive payment by mail if he or she so requests and designates a mailing
address. The date of the mailing shall constitute the date of payment for
purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

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

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

32 If an employer willfully fails to pay, without abatement or reduction, in
33 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
34 employee who is discharged or who quits, the wages of the employee shall

1 continue as a penalty from the due date thereof at the same rate until paid or
2 until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

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

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

12 13 **NINTH CAUSE OF ACTION**

14 **Wrongful Termination In Violation of Public Policy**

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

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

18 114. Subsequent to PLAINTIFF's participation in protective activity by
19 complaining to DEFENDANT of DEFENDANT's unlawful employment practices,
20 DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against
21 PLAINTIFF. In December of 2020, and continuing throughout the rest of PLAINTIFF's
22 employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of
23 DEFENDANT's illegal employment practices, including, but not limited to,
24 DEFENDANT's failure to follow the California Labor Code and failure to pay PLAINTIFF
25 correctly. PLAINTIFF initiated this action by sending a Private Attorney General Act
26 Notice in December of 2020 informing DEFENDANT of the violations outlined in this
27 Complaint and PLAINTIFF's intent on bringing a lawsuit for the violations of the California
28 Labor Code stated in the December 3, 2020 PAGA Notice that was sent to DEFENDANT

1 via certified mail.

2 115. Subsequent to PLAINTIFF's participation in protective activity by
3 complaining to DEFENDANT of DEFENDANT's unlawful employment practices,
4 DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against
5 PLAINTIFF. Specifically, DEFENDANT terminated PLAINTIFF's employment with
6 RESPONDENT in March of 2020. As a result, there is a causal link between the protected
7 activity and DEFENDANT's decision to terminate PLAINTIFF's employment, which is
8 against public policy. As a direct consequence of PLAINTIFF's complaints to
9 DEFENDANT, DEFENDANT retaliated against PLAINTIFF by terminating his
10 employment.

11 116. PLAINTIFF raised complaints of illegality while she worked for
12 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
13 retaliated against her by taking adverse employment actions, including employment
14 termination, against her.

15 117. As a proximate result of DEFENDANT'S willful, knowing, and intentional,
16 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental
17 and physical pain and anguish, all to her damage in a sum according to proof.

18 118. As a result of DEFENDANT'S adverse employment actions against
19 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
20 proof.

21 119. DEFENDANT'S misconduct was committed intentionally, in a malicious,
22 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
23 against DEFENDANT.

24 **TENTH CAUSE OF ACTION**

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

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

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

28 120. PLAINTIFF incorporates by reference the allegations set forth in the prior

1 paragraphs as though fully set forth at this point.

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

12 122. PLAINTIFF, and such persons that may be added from time to time who
13 satisfy the requirements and exhaust the administrative procedures under the Private
14 Attorney General Act, brings this Representative Action on behalf of the State of California
15 with respect to himself and all individuals who worked for DEFENDANT in California and
16 classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time
17 period of December 3, 2019 until a date as determined by the Court (the "PAGA PERIOD").

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

25 124. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
28 properly record and provide legally required meal and rest periods, (c) failed to pay overtime

1 wages, (d) failed to pay minimum wages, (e) failed to reimburse for required expenses, and
2 (f) failed to pay wages when due, all in violation of the applicable Labor Code sections
3 listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
4 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
5 Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and
6 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks
7 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of
8 2004 as the representative of the State of California for the illegal conduct perpetrated on
9 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
18 severally, as follows:

19 1. On behalf of the CALIFORNIA CLASS:

- 20 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
22 B) An order temporarily, preliminarily and permanently enjoining and restraining
23 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
24 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
25 withheld from compensation due to PLAINTIFF and the other members of the
26

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

CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;

D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and,

F) 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.

3. On behalf of PLAINTIFF for the Ninth cause of action:

A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

B) Special and General damages according to proof;

C) Statutory damages, penalties and attorney's fees;

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- D) For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;
- E) For loss of earnings (both past and future); and,
- F) For interest at the legal rate in an amount according to proof.

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

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

5. 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: May 6, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____



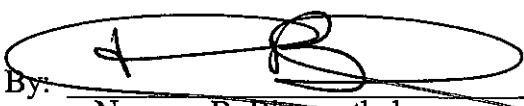
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: May 6, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff