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Guillermo Nunez and Eriberto Aquino

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

ELECTRONICALLY FILED

Superior Court of California,

County of San Diego

06/06/2023 at 11:34:00 AM

Clerk of the Superior Court

By Katie Winburn, Deputy Clerk

GUILLERMO NUNEZ and ERIBERTO
AQUINO, on behalf of the State of
California, as private attorneys general, and as
individuals on behalf of themselves and on
behalf of others similarly situated,

Plaintiffs,

vs.

INTERSTATE MANAGEMENT
COMPANY, L.L.C., a Limited Liability
Company; INTERSTATE HOTELS AND
RESORTS, INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2021-00023535-CU-OE-CTL

**FIRST 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 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. RETALIATION IN VIOLATION OF
LABOR CODE § 1102.5, *et seq.*;
9. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY; and,
10. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

Plaintiffs Guillermo Nunez and Eriberto Aquino ("PLAINTIFFS"), individuals, on
behalf of themselves and all other similarly situated current and former employees allege on
information and belief, except for their own acts and knowledge which are based on personal
knowledge, the following:

THE PARTIES

1
2 1. Defendant Interstate Management Company, L.L.C. is a limited liability company
3 that at all relevant times mentioned herein conducted and continues to conduct substantial
4 business in the state of California.

5 2. Defendant Interstate Hotels and Resorts, Inc. is a limited liability company that
6 at all relevant times mentioned herein conducted and continues to conduct substantial business
7 in the state of California.

8 3. PLAINTIFFS allege there has existed a unity of interest between Interstate
9 Management Company, L.L.C. and Interstate Hotels and Resorts, Inc. as evidenced by pay
10 stubs, tax documents, California Secretary of State registered business information, and the
11 entities PLAINTIFFS worked for, such that any individuality and separateness between the
12 entities has ceased and both defendants are referred to herein as (“DEFENDANT”).

13 4. DEFENDANT primarily operates in the Hotel or Motel Management business
14 industry within the Engineering, Accounting, Research, and Management Services sector.

15 5. Plaintiff Nunez has been employed by DEFENDANT in California since June of
16 2019 and was classified as exempt from overtime from June of 2019 to February of 2020 and
17 reclassified by DEFENDANT as a non-exempt employee in February of 2020. Plaintiff Nunez
18 is now paid on an hourly basis, classified as a non-exempt employee, and entitled to the legally
19 required meal and rest periods and payment of minimum and overtime wages due for all time
20 worked.

21 6. Plaintiff Aquino was employed by DEFENDANT in California during the class
22 period and was classified as exempt from overtime and classified by DEFENDANT as non-
23 exempt employee. Plaintiff Aquino was paid on an hourly basis, classified as a non-exempt
24 employee, and entitled to the legally required meal and rest periods and payment of minimum
25 and overtime wages due for all time worked.

26 7. PLAINTIFFS bring this Class Action on behalf of themselves and a California
27 class, defined as all individuals who are or previously were employed by DEFENDANT in
28 California and classified as hourly, non-exempt employees (the “CALIFORNIA CLASS”) at

1 any time during the time period January 1, 2020 to January 31, 2023 (the “CALIFORNIA
2 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
3 CLASS Members is under five million dollars (\$5,000,000.00).

4 8. PLAINTIFFS bring this Class Action on behalf of themselves and a
5 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
6 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and
7 practice which failed to lawfully compensate these employees. DEFENDANT’s policy and
8 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
9 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members
10 of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
11 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
12 named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
13 economically injured by DEFENDANT’s past and current unlawful conduct, and all other
14 appropriate legal and equitable relief.

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

24 10. The agents, servants and/or employees of the Defendants and each of them acting
25 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
26 agent, servant and/or employee of the Defendants, and personally participated in the conduct
27 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
28 Consequently, the acts of each Defendant are legally attributable to the other Defendants and

1 all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendants' agents, servants and/or employees.

4 5 **THE CONDUCT**

6 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
7 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
8 meaning the time during which an employee is subject to the control of an employer, including
9 all the time the employee is suffered or permitted to work. DEFENDANT requires
10 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the
11 time they are under DEFENDANT's control. PLAINTIFFS are from time to time interrupted
12 by work assignments while clocked out for what should be PLAINTIFFS' off-duty meal break.
13 Also, DEFENDANT, as a matter of established company policy and procedure, administered
14 a uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and
15 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the
16 course of their employment, PLAINTIFFS and CALIFORNIA CLASS Members were paid less
17 than they would have been paid had they been paid for actual recorded time rather than
18 "rounded" time. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit
19 minimum wage, overtime wage compensation, and off-duty meal breaks by working without
20 their time being correctly recorded and without compensation at the applicable rates.
21 DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS
22 Members for all time worked, is evidenced by DEFENDANT's business records.

23 12. State and federal law provides that employees must be paid overtime at one-and-
24 one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS
25 Members are compensated at an hourly rate plus incentive pay that is tied to specific elements
26 of an employee's performance.

27 13. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
28 Members' compensation is DEFENDANT's non-discretionary incentive program that paid

1 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
2 performance for DEFENDANT. The non-discretionary incentive program provided all
3 employees paid on an hourly basis with incentive compensation when the employees met the
4 various performance goals set by DEFENDANT. However, when calculating the regular rate
5 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,
6 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
7 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
8 the incentive program to potential and new employees as part of the compensation package. As
9 a matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA
10 CLASS Members must be included in the "regular rate of pay." DEFENDANT also underpays
11 sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS Members by failing to pay
12 such wages at the regular rate of pay. Specifically, PLAINTIFFS and other non-exempt
13 employees earn non-discretionary remuneration, including but not limited to, incentives, shift
14 differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT
15 underpays sick pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base
16 rates of pay. The failure to do so has resulted in a underpayment of overtime compensation to
17 PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANT.

18 14. PLAINTIFFS and the other CALIFORNIA CLASS Members were regularly
19 entitled to wages. DEFENDANT failed to timely pay PLAINTIFFS and the other
20 CALIFORNIA CLASS Members all wages at the correct rate. Instead, DEFENDANT paid
21 PLAINTIFFS and the other CALIFORNIA CLASS Members "Retro Correct" pay without
22 including interest, penalties and timely wages at a later time in violation of California Labor
23 Code sections 510 and 1194 and the applicable California Industrial Welfare Commission wage
24 order(s).

25 15. As a result of their rigorous work schedules, PLAINTIFFS and other
26 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off
27 duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFFS and
28 other CALIFORNIA CLASS Members are required from time to time to perform work as

1 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
2 a meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFFS and
3 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
4 which these employees are required by DEFENDANT to work ten (10) hours of work.
5 PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeit meal
6 breaks without additional compensation and in accordance with DEFENDANT's corporate
7 policy and practice.

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

1 17. Typically, PLAINTIFFS and the other CALIFORNIA CLASS Members would
2 work above 8 hour work shifts for DEFENDANT. During these work shifts, PLAINTIFFS
3 and the other CALIFORNIA CLASS Members would be required to do many tasks such as
4 cleaning, maintenance, servicing hotel rooms and the hotel facilities and perform all
5 necessary job duties fast enough so that the hotel facilities can functionally run at all times
6 for the hotel guests at DEFENDANT's place of business. During these shifts it would be
7 very busy where PLAINTIFFS and the other CALIFORNIA CLASS Members would not be
8 able or permitted to take its entitled uninterrupted 10-minute rest breaks each four hours or a
9 30-minute uninterrupted meal break at a reasonably practicable time during PLAINTIFFS'
10 and the other CALIFORNIA CLASS Members shift when they worked more than a six, ten
11 and twelve hour shift. DEFENDANT would not compensate PLAINTIFFS and the other
12 CALIFORNIA CLASS Members for any of their missed meal breaks or rest periods
13 throughout their employment. The wages for the missed meal breaks and rest periods that
14 should have been paid its premium wages. Moreover, DEFENDANT had a policy, pattern or
15 practice of requiring, encouraging and/or pressuring its employees to take late, short,
16 interrupted, on-premises, on-call or no 10-minute rest breaks and/or 30-minute meal breaks
17 at a reasonably practicable time. DEFENDANT would not compensate PLAINTIFFS and
18 the other CALIFORNIA CLASS Members for all of their missed, short, late or interrupted,
19 meal breaks or rest periods throughout their employment nor were they paid all of premium
20 wages for the missed, short, late or interrupted, meal breaks and rest periods that should
21 have been paid.
22

23 18. At some point, DEFENDANT provided employees with company owned
24 electronic devices to maintain throughout their entire shift. PLAINTIFFS and the other
25 CALIFORNIA CLASS Members were responsible for maintaining an electronic device such
26 as radio devices during meal periods making all of these meal periods and rest periods to be
27 on-call in violation of California Labor Code sections 510 and 1194 and the applicable
28

1 California Industrial Welfare Commission wage order(s). These employees were entitled to
2 minimum wages and overtime wages as a result of on-call meal periods.

3
4 19. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to
5 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
6 actual amount of time these employees work. Pursuant to the Industrial Welfare
7 Commission Wage Orders, DEFENDANT is required to pay PLAINTIFFS and other
8 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
9 employee was subject to the control of an employer, including all the time the employee was
10 permitted or suffered to permit this work. DEFENDANT requires these employees to work
11 off the clock without paying them for all the time they are under DEFENDANT's control.
12 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
13 members of the CALIFORNIA CLASS are under compensated for all time worked. As a
14 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit time worked by
15 working without their time being accurately recorded and without compensation at the
16 applicable minimum wage and overtime wage rates. To the extent that the time worked off
17 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
18 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
1197, and 1197.1.

19 20. From time to time, DEFENDANT also fails to provide PLAINTIFFS and the
20 other members of the CALIFORNIA CLASS with complete and accurate wage statements
21 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
22 Code § 226 provides that every employer shall furnish each of his or her employees with an
23 accurate itemized wage statement in writing showing, among other things, gross wages
24 earned and all applicable hourly rates in effect during the pay period and the corresponding
25 amount of time worked at each hourly rate. Specifically, DEFENDANT violated Section
26 226 by failing to identify the correct rates of pay and number of hours worked, including for
27 the "MISC Earnings" item of pay, which is a wage payment. Aside, from the violations
28 listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFFS an itemized

1 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
2 result, DEFENDANT from time to time provides PLAINTIFFS and the other members of
3 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

4 21. Furthermore, throughout PLAINTIFFS' and the other CALIFORNIA CLASS
5 Members' employment, their paystubs did not accurately reflect their applicable total hours
6 worked, net wages earned, gross wages earned and actual applicable wage rate all in
7 violation of California Labor Code Section 226(a), specifically sections 1-2, 4-5 and 9. Due
8 to the fact that DEFENDANT excluded the hours' worth of work that should have been
9 reflected on PLAINTIFFS' and the other CALIFORNIA CLASS Members' paystubs for the
10 correct gross wages, net wages, applicable hourly rate with corresponding number of hours
11 worked. Therefore, the paystubs did not accurately reflect the net wages earned, gross wages
12 earned, accurately depict deductions that should have been taken out and actual applicable
13 wage rate corresponding with the total hours worked.

14 22. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
15 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
16 the wages are paid not more than seven calendar days following the close of the payroll
17 period. Cal. Lab. Code § 210 provides:

18 in [I]n addition to, and entirely independent and apart from, any other penalty provided
19 this article, every person who fails to pay the wages of each employee as provided in
20 Sections. . . .204. . . shall be subject to a civil penalty as follows: (1) For any initial
21 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
22 each subsequent violation, or any willful or intentional violation, two hundred dollars
23 (\$200) for each failure to pay each employee, plus 25 percent of the amount
24 unlawfully withheld.

25 23. DEFENDANT from time to time fails to pay PLAINTIFFS and members of
26 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
27 payroll period, including but not limited to for the "MISC Earnings" regular wage payment,
28 in accordance with Cal. Lab. Code § 204(d).

29 24. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
30 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
31 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct

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

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

20
21 26. During PLAINTIFFS' and the other CALIFORNIA CLASS Members'
22 employment, DEFENDANT had a policy where it did not pay all wages upon termination
23 that should have been included in the wage payments and wages for on-call meal periods.
24 These monies were supposed to be paid out to PLAINTIFFS and the other CALIFORNIA
25 CLASS Members at the time the wages were earned or upon termination.

26 27. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the
27 legally required off-duty meal and rest breaks to them as required by the applicable Wage
28 Order and Labor Code and failed to pay them all minimum and overtime wages due to them.

1 DEFENDANT does not have a policy or practice which provided timely off-duty meal and
2 rest breaks to PLAINTIFFS and also fails to compensate PLAINTIFFS for their missed meal
3 and rest breaks. The nature of the work performed by the PLAINTIFFS does not prevent
4 them from being relieved of all of their duties for the legally required off-duty meal periods.
5 As a result, DEFENDANT's failure to provide PLAINTIFFS with the legally required meal
6 periods is evidenced by DEFENDANT's business records.

7 28. Furthermore, specifically as to Plaintiff Nunez, DEFENDANT failed to
8 properly classify Plaintiff Nunez as a non-exempt employee during his employment from
9 June of 2019 to February of 2020. As such, Plaintiff Nunez was not paid overtime wages for
10 his overtime worked during that time period. In or around February of 2020, and continuing
11 through out the rest of Plaintiff Nunez's employment, Plaintiff Nunez engaged in protected
12 activity by complaining to DEFENDANT of DEFENDANT's failure to pay Plaintiff Nunez
13 correctly under the California Labor Code. As a direct consequence of Plaintiff Nunez's
14 complaints to DEFENDANT, DEFENDANT retaliated against Plaintiff Nunez by denying
15 Plaintiff Nunez the proper wages and other employment related job benefits which has
16 resulted in lost wages for PLAINTIFF. DEFENDANT also retaliated against Plaintiff Nunez
17 by taking adverse employment actions, including employment termination, against him.
18

19 **JURISDICTION AND VENUE**

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

25 30. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because Plaintiff Nunez worked in this County for DEFENDANT
27 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and
28 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 **THE CALIFORNIA CLASS**
4

5 31. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
6 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
7 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
8 California class, defined as all individuals who are or previously were employed by
9 DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA
10 CLASS") at any time during the time period January 1, 2020 to January 31, 2023 (the
11 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
12 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

16 33. DEFENDANT, as a matter of company policy, practice and procedure, and in
17 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
18 Order requirements, and the applicable provisions of California law, intentionally,
19 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
20 meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members,
21 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
22 this work and permits or suffers to permit this work.

23 34. 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, as a matter of policy and
26 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
27 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
28

1 Member is paid as required by law. This common business practice is applicable to each
2 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
3 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
4 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

5 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
6 CLASS Members is impracticable.

7 36. DEFENDANT violated the rights of the CALIFORNIA CLASS under
8 California law by:

- 9 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
10 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
11 and/or deceptively having in place company policies, practices and
12 procedures that failed to record and pay PLAINTIFFS and the other
13 members of the CALIFORNIA CLASS for all time worked, including
14 minimum wages owed and overtime wages owed for work performed
15 by these employees; and,
16 (b) Committing an act of unfair competition in violation of the UCL, by
17 failing to provide the PLAINTIFFS and the other members of the
18 CALIFORNIA CLASS with the legally required meal and rest periods.
19

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

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

CALIFORNIA CLASS;

(c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, were classified as non-exempt employees paid on an hourly basis who were subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and have retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will 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 PLAINTIFFS seek 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

1 adjudication of the controversy, including consideration of:

- 2 1) The interests of the members of the CALIFORNIA CLASS in
3 individually controlling the prosecution or defense of separate
4 actions in that the substantial expense of individual actions will
5 be avoided to recover the relatively small amount of economic
6 losses sustained by the individual CALIFORNIA CLASS
7 Members when compared to the substantial expense and burden
8 of individual prosecution of this litigation;
- 9 2) Class certification will obviate the need for unduly duplicative
10 litigation that would create the risk of:
- 11 A. Inconsistent or varying adjudications with respect to
12 individual members of the CALIFORNIA CLASS, which
13 would establish incompatible standards of conduct for the
14 DEFENDANT; and/or,
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- 16 B. Adjudications with respect to individual members of the
17 CALIFORNIA CLASS would as a practical matter be
18 dispositive of the interests of the other members not
19 parties to the adjudication or substantially impair or
20 impede their ability to protect their interests;
- 21 3) In the context of wage litigation because a substantial number of
22 individual CALIFORNIA CLASS Members will avoid asserting
23 their legal rights out of fear of retaliation by DEFENDANT,
24 which may adversely affect an individual's job with
25 DEFENDANT or with a subsequent employer, the Class Action
26 is the only means to assert their claims through a representative;
27 and,
28
- 4) A class action is superior to other available methods for the fair

1 and efficient adjudication of this litigation because class
2 treatment will obviate the need for unduly and unnecessary
3 duplicative litigation that is likely to result in the absence of
4 certification of this action pursuant to Cal. Code of Civ. Proc. §
5 382.

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

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

- 2 (f) There is a community of interest in ensuring that the combined assets of
3 DEFENDANT are sufficient to adequately compensate the members of
4 the CALIFORNIA CLASS for the injuries sustained;
- 5 (g) DEFENDANT has acted or refused to act on grounds generally
6 applicable to the CALIFORNIA CLASS, thereby making final class-
7 wide relief appropriate with respect to the CALIFORNIA CLASS as a
8 whole;
- 9 (h) The members of the CALIFORNIA CLASS are readily ascertainable
10 from the business records of DEFENDANT; and,
- 11 (i) Class treatment provides manageable judicial treatment calculated to
12 bring a efficient and rapid conclusion to all litigation of all wage and
13 hour related claims arising out of the conduct of DEFENDANT as to
14 the members of the CALIFORNIA CLASS.

15 40. DEFENDANT maintains records from which the Court can ascertain and
16 identify by job title each of DEFENDANT's employees who have been intentionally
17 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
18 PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of
19 similarly situated employees when they have been identified.
20

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

23 41. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth and
24 Seventh causes Action on behalf of a California sub-class, defined as all members of the
25 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
26 California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the time period
27 January 1, 2020 to January 31, 2023 (the "CALIFORNIA LABOR SUB-CLASS"
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1 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
2 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
3 dollars (\$5,000,000.00).

4 42. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
5 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
6 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
7 failed to correctly calculate compensation for the time worked by PLAINTIFFS and the
8 other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed
9 to these employees, even though DEFENDANT enjoyed the benefit of this work, required
10 employees to perform this work and permitted or suffered to permit this work.
11 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
12 which these employees are entitled in order to unfairly cheat the competition and unlawfully
13 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
14 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
15 should be adjusted accordingly.
16

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

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

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

- 26 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA LABOR SUB-
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1 CLASS for missed meal and rest breaks in violation of the California
2 Labor Code and California regulations and the applicable California
3 Wage Order;

- 4 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the
5 other members of the CALIFORNIA LABOR SUB-CLASS with
6 accurate itemized wage statements;
- 7 (c) Whether DEFENDANT has engaged in unfair competition by the
8 above-listed conduct;
- 9 (d) The proper measure of damages and penalties owed to the members of
10 the CALIFORNIA LABOR SUB-CLASS; and,
- 11 (e) Whether DEFENDANT's conduct was willful.

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

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

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

- 17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
18 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
19 CLASS Members is impracticable and the disposition of their claims as
20 a class will benefit the parties and the Court;
21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
22 issues that are raised in this Complaint are common to the
23 CALIFORNIA LABOR SUB-CLASS and will apply to every member
24 of the CALIFORNIA LABOR SUB-CLASS;
25 (c) The claims of the representative PLAINTIFFS are typical of the claims
26 of each member of the CALIFORNIA LABOR SUB-CLASS.
27 PLAINTIFFS, like all the other members of the CALIFORNIA
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1 LABOR SUB-CLASS, were non-exempt employees paid on an hourly
2 basis who were subjected to the DEFENDANT's practice and policy
3 which failed to pay the correct amount of wages due to the
4 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained
5 economic injury as a result of DEFENDANT's employment practices.
6 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
7 CLASS were and are similarly or identically harmed by the same
8 unlawful, deceptive, and unfair misconduct engaged in by
9 DEFENDANT; and,

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

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20 48. In addition to meeting the statutory prerequisites to a Class Action, this action
21 is 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
24 of separate actions by individual members of the CALIFORNIA
25 LABOR 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
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1 would establish incompatible standards of conduct for the
2 parties 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
5 practical matter be dispositive of interests of the other members
6 not party to the adjudication or substantially impair or impede
7 their ability to protect their interests.

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

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

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

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382.

49. 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 SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of

- 1 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 2 (g) DEFENDANT has acted or refused to act on grounds generally
- 3 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
- 4 making final class-wide relief appropriate with respect to the
- 5 CALIFORNIA LABOR SUB-CLASS as a whole;
- 6 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
- 7 ascertainable from the business records of DEFENDANT. The
- 8 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
- 9 CLASS Members who worked for DEFENDANT in California at any
- 10 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 11 (i) Class treatment provides manageable judicial treatment calculated to
- 12 bring a efficient and rapid conclusion to all litigation of all wage and
- 13 hour related claims arising out of the conduct of DEFENDANT as to
- 14 the members of the CALIFORNIA LABOR SUB-CLASS.
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17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

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

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

21 50. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege

22 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of

23 this Complaint.

24 51. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.

25 Code § 17021.

26 52. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)

27 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

28

1 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
2 unfair competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair
4 competition may be enjoined in any court of competent jurisdiction. The court
5 may make such orders or judgments, including the appointment of a receiver,
6 as may be necessary to prevent the use or employment by any person of any
7 practice which constitutes unfair competition, as defined in this chapter, or as
8 may be necessary to restore to any person in interest any money or property,
9 real or personal, which may have been acquired by means of such unfair
10 competition.

11 Cal. Bus. & Prof. Code § 17203.

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

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

26 55. By the conduct alleged herein, DEFENDANT's practices were deceptive and
27 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
28 meal and rest periods, the required amount of compensation for missed meal and rest
periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
reimburse all necessary business expenses incurred, and failed to pay Fair Labor Standards

1 Act overtime wages due for overtime worked as a result of failing to include non-
2 discretionary incentive compensation into their regular rate for purposes of computing the
3 proper overtime pay, due to a business practice that cannot be justified, pursuant to the
4 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of
5 Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and
6 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
7 wrongfully withheld.

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

13 57. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
14 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
15 provide all legally required meal breaks to PLAINTIFFS and the other members of the
16 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

17 58. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of
18 each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an
19 off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
20 hour of pay for each workday in which a second off-duty meal period was not timely
21 provided for each ten (10) hours of work.

22 59. PLAINTIFFS further demand on behalf of themselves and each member of the
23 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
24 duty paid rest period was not timely provided as required by law.

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

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

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

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

20 64. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no
21 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
22 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
23 unabated. As a result of the unlawful and unfair business practices described herein,
24 PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will
25 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
26 from continuing to engage in these unlawful and unfair business practices.
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1 70. DEFENDANT's unlawful wage and hour practices manifested, without
2 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
3 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and
4 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
5 wage pay.

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

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

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

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

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

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

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

3 **THIRD CAUSE OF ACTION**

4 **For Failure To Pay Overtime Compensation**

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

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

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

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

17 80. 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 81. Cal. Lab. Code § 510 further provides that employees in California shall not
20 be employed more than eight (8) hours per workday and more than forty (40) hours per
21 workweek unless they receive additional compensation beyond their regular wages in
22 amounts specified by law.

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

2 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
3 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
4 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
5 including overtime work.

6 84. DEFENDANT's unlawful wage and hour practices manifested, without
7 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
8 implementing a policy and practice that failed to accurately record overtime worked by
9 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
10 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
11 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in
12 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty
13 (40) hours in any workweek.

14 85. In committing these violations of the California Labor Code, DEFENDANT
15 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
16 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
17 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
18 violation of the California Labor Code, the Industrial Welfare Commission requirements
19 and other applicable laws and regulations.

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

23 87. 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 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not
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1 subject to a valid collective bargaining agreement that would preclude the causes of action
2 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of
3 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's
4 violations of non-negotiable, non-waiveable rights provided by the State of California.

5 88. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS
6 and the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
7 overtime worked that they are entitled to, constituting a failure to pay all earned wages..

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

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

21 91. DEFENDANT knew or should have known that PLAINTIFFS and the other
22 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
23 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
24 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
25 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.
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1 92. In performing the acts and practices herein alleged in violation of California
2 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
3 CLASS for all overtime worked and provide them with the requisite overtime compensation,
4 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
5 toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
6 with a conscious of and utter disregard for their legal rights, or the consequences to them,
7 and with the despicable intent of depriving them of their property and legal rights, and
8 otherwise causing them injury in order to increase company profits at the expense of these
9 employees.

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

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[Cal. Lab. Code §§ 226.7 & 512]

94. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

96. DEFENDANT further violates California Labor Code §§ 226.7 and the

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

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

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10 **FIFTH CAUSE OF ACTION**

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

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

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

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16 98. PLAINTIFFS, 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 99. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
20 from time to time required to work in excess of four (4) hours without being provided ten
21 (10) minute rest periods. Further, these employees from time to time were denied their first
22 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
23 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
24 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
25 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

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

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

8 101. As a proximate result of the aforementioned violations, PLAINTIFFS 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 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

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

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

20 103. Cal. Labor Code § 226 provides that an employer must furnish employees with
21 an "accurate itemized" statement in writing showing:

22 (1) gross wages earned,

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

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

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

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

18 **[Cal. Lab. Code § 2802]**

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

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

24 107. Cal. Lab. Code § 2802 provides, in relevant part, that:

25 An employer shall indemnify his or her employee for all necessary
26 expenditures or losses incurred by the employee in direct consequence of the
27 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.

28 108. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,

1 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
2 CLASS members for required expenses incurred in the discharge of their job duties for
3 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
4 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
5 limited to, costs related to using their personal cellular phones and personal vehicles on
6 behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other
7 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use
8 their personal cellular phones and personal vehicles in order to perform work related job
9 tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and the
10 CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
11 personal cellular phones and personal vehicles for DEFENDANT within the course and
12 scope of their employment for DEFENDANT. These expenses were necessary to complete
13 their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert
14 any waiver of this expectation. Although these expenses were necessary expenses incurred
15 by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT
16 failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
17 CLASS members for these expenses as an employer is required to do under the laws and
18 regulations of California.
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20 109. PLAINTIFFS therefore demand reimbursement for expenditures or losses
21 incurred by themselves and the CALIFORNIA LABOR SUB-CLASS members in the
22 discharge of their job duties for DEFENDANT, or their obedience to the directions of
23 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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1 **EIGHTH CAUSE OF ACTION**

2 **Retaliation**

3 **[Violation of Cal. Lab. Code § 1102.5, *et seq.*]**

4 **(By Plaintiff Nunez Against All Defendants)**

5 110. PLAINTIFFS reallege and incorporates by reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

7 111. At all relevant times, Labor Code section 1102.5 was in effect and was
8 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against
9 any employee, including Plaintiff Nunez, for raising complaints of illegality and/or belief
10 that the employee may disclose illegality.

11 112. DEFENDANT failed to properly classify Plaintiff Nunez as a non-exempt
12 employee during his employment from June of 2019 to February of 2020. As such, Plaintiff
13 Nunez was not paid overtime wages for his overtime worked during that time period. In or
14 around February of 2020, and continuing through out the rest of Plaintiff Nunez's
15 employment, Plaintiff Nunez engaged in protected activity by complaining to
16 DEFENDANT of DEFENDANT's failure to pay Plaintiff Nunez correctly under the
17 California Labor Code. As a direct consequence of Plaintiff Nunez's complaints to
18 DEFENDANT, DEFENDANT retaliated against Plaintiff Nunez by denying Plaintiff Nunez
19 the proper wages and other employment related job benefits which has resulted in lost wages
20 for Plaintiff Nunez. Plaintiff Nunez raised complaints of illegality while he worked for
21 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
22 retaliated against him by taking adverse employment actions.

23 113. As a proximate result of DEFENDANT'S willful, knowing, and intentional
24 violation(s) of Labor Code section 1102.5, Plaintiff Nunez has suffered and continues to
25 suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his
26 damage in a sum according to proof.
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114. As a result of DEFENDANT'S adverse employment actions against Plaintiff Nunez, Plaintiff Nunez has suffered general and special damages in sums according to proof.

115. DEFENDANT’S misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling Plaintiff Nunez to punitive damages against defendants.

NINTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(By Plaintiff Nunez Against DEFENDANT)

116. PLAINTIFFS reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

117. Subsequent to Plaintiff Nunez's participation in protective activity by complaining to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected Plaintiff Nunez to adverse employment actions by terminating Plaintiff Nunez's employment. Specifically, ending in May of 2021, and continuing throughout the rest of Plaintiff Nunez's employment, Plaintiff Nunez first engaged in protected activity by filing a Class Action lawsuit alleging DEFENDANT violated the California Labor Code, and then additionally, in May of 2021 and continuing throughout the rest of Plaintiff Nunez's employment, further engaged in protected activity by filing a Private Attorney General Act lawsuit. Soon thereafter, in July of 2021, DEFENDANT terminated Plaintiff Nunez's employment with DEFENDANT as a direct result of Plaintiff Nunez engaging in said protected activity. As a result, there is a causal link between the protected activity and DEFENDANT's decision to terminate his employment, which is against public policy.

118. Plaintiff Nunez raised complaints of illegality while he worked for

1 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
2 retaliated against him by taking adverse employment actions, including employment
3 termination, against him.

4 119. As a proximate result of DEFENDANT's willful, knowing, and intentional
5 conduct, Plaintiff Nunez has suffered and continues to suffer humiliation, emotional
6 distress, and mental and physical pain and anguish, in a sum according to proof.

7 120. As a result of DEFENDANT's adverse employment actions against Plaintiff
8 Nunez, Plaintiff Nunez has suffered general and special damages in sums according to
9 proof.

10 121. DEFENDANT's misconduct was committed intentionally, in a malicious,
11 oppressive manner, and fraudulent manner entitling Plaintiff Nunez to punitive damages
12 against DEFENDANT.

13 **TENTH CAUSE OF ACTION**

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

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

16 **(By PLAINTIFFS and Against All Defendants)**

17 122. PLAINTIFFS incorporate by reference the allegations set forth in the prior
18 paragraphs as though fully set forth at this point.

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

3 124. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
4 provides for a civil penalty to be assessed and collected by the Labor and Workforce
5 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
6 agencies or employees for violation of the code may, as an alternative, be recovered through
7 a civil action brought by aggrieved employees on behalf of themselves and other current or
8 former employees pursuant to the procedures specified in Labor Code § 2699.3.

9 125. For all provisions of the Labor Code except those for which a civil penalty is
10 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one
11 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
12 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
13 each subsequent pay period in which Defendants violated these provisions of the Labor
14 Code.

15 126. DEFENDANTS' conduct violates numerous Labor Code sections including,
16 but not limited to the following:

- 17 (a) Violation of Labor Code §§ 226.7, 512, 1198 and Wage Order 5, Section 11,
18 for Defendants' failure to provide PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES all required legally compliant meal periods, and
20 DEFENDANTS' failure to provide PLAINTIFFS and other AGGRIEVED
21 EMPLOYEES with one hour of pay of PLAINTIFFS and other AGGRIEVED
22 EMPLOYEES' regular rate of compensation for each meal period that was not
23 provided, as herein alleged;
24 (b) Violation of Labor Code §§ 226.7, 512, 1198 and Wage Order 5, Section 12
25 for DEFENDANTS' failure to provide PLAINTIFFS and other AGGRIEVED
26 EMPLOYEES all required rest periods, and DEFENDANTS' failure to
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- 1 provide PLAINTIFFS and other AGGRIEVED EMPLOYEES with one hour
2 of pay of PLAINTIFFS and other AGGRIEVED EMPLOYEES' regular rate
3 of compensation for each rest period that was not provided, as herein alleged;
4 (c) Violation of Labor Code §§ 226, 226.3, 1198 and Wage Order 5, Section 7 for
5 failure to maintain records and provide accurate itemized wage statements to
6 PLAINTIFFS and other AGGRIEVED EMPLOYEES as herein alleged;
7 (d) Violation of Labor Code §§ 201, 202, and 203 for failure to pay all wages
8 upon termination, resignation or end of employment as a result of failing to
9 pay minimum wages and overtime wages for all hours worked;
10 (e) Violation of Labor Code §§ 510, 1194, and Wage Order 5, Section 3 for
11 failure to pay all minimum wages for hours worked;
12 (f) Violation of Labor Code §§ 510, 1194, and Wage Order 5, Section 3 for
13 failure to pay all overtime wages for hours worked;
14 (g) Violation of Labor Code § 210, for failure to pay wages for hours worked;
15 (h) Violation of Labor Code § 221, for unlawful receipt of wages; and,
16 (i) Violation of Labor Code § 2802 for failure to reimburse for all
17 business-related expenses.
18

19 127. Further, Labor Code § 558(a) provides "any employer or other person acting
20 on behalf of an employer who violates, or causes to be violated, a section of this chapter or
21 any provisions regulating hours and days of work in any order of the IWC shall be subject to
22 a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid
23 employee for each pay period for which the employee was underpaid in addition to an
24 amount sufficient to recover underpaid wages, (2) For each subsequent violation, one
25 hundred dollars (\$100) for each underpaid employee for each pay period for which the
26 employee was underpaid in addition to an amount sufficient to recover unpaid wages."
27 Labor Code § 558(c) provides "the civil penalties provided for in this section are in addition
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1 to any other civil or criminal penalty provided by law."

2 128. PLAINTIFFS are "aggrieved employees" because they were employed by the
3 alleged violators and had or ore more of the alleged violations committed against them, and
4 therefore are properly suited to represent the interests of all other AGGRIEVED
5 EMPLOYEES.

6 129. Labor Code §§ 2698, *et seq.* imposes upon Defendants, a penalty of one
7 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
8 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
9 each subsequent pay period in which Defendants violated the Labor Code.

10 130. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, PLAINTIFFS on
11 behalf of all other AGGRIEVED EMPLOYEES are entitled to recover civil penalties
12 against DEFENDANT for violations of the Labor Code sections cited above.

13 131. The California Supreme Court has held that a representative action does not
14 need to meet the class certification requirements because it is strictly a state enforcement
15 action. *Arias v. Superior Court*, 46 Cal.4th 969, 970-75 (2009).

16 132. DEFENDANTS' conduct as alleged herein, has been and continues to be
17 unfair, unlawful and harmful to PLAINTIFFS and the general public. PLAINTIFFS seek to
18 enforce important rights affecting the public interest within the meaning of Code of Civil
19 Procedure § 1021.5.

20 133. PLAINTIFFS, and such persons that may be added from time to time who
21 satisfy the requirements and exhaust the administrative procedures under the Private
22 Attorney General Act, bring this Representative Action on behalf of the State of California
23 with respect to themselves and all individuals who are or previously were employed by
24 DEFENDANT in California and classified as hourly, non-exempt employees (the
25 "AGGRIEVED EMPLOYEES") during the time period January 1, 2020 to January 31, 2023
26 (the "PAGA PERIOD").
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1 134. On August 7, 2020, Plaintiff Aquino gave written notice by electronic mail to
2 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
3 employer of the specific provisions of this code alleged to have been violated as required by
4 Labor Code § 2699.3. On January 20, 2021, Plaintiff Nunez gave written notice by
5 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
6 certified mail to the employer of the specific provisions of this code alleged to have been
7 violated as required by Labor Code § 2699.3. The statutory waiting period for
8 PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to
9 Section 2699.3, PLAINTIFFS may now commence a representative civil action under
10 PAGA pursuant to Section 2699 as the proxies of the State of California with respect to all
11 AGGRIEVED EMPLOYEES as herein defined.

12 135. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
14 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 overtime
16 wages, (d) failed to pay minimum wages, (e) failed to reimburse employees 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 Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
19 226.7, 233, 246 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
20 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable
21 Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such
22 conduct.¹ PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor
23 Code Private Attorney General Act of 2004 as the representatives of the State of California
24 for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED
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27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1 EMPLOYEES.

2 136. All of the conduct and violations alleged herein occurred during the PAGA
3 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations
5 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
6 2018 AJDAR 12157 (Certified for Publication 12/19/18).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

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

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

- 22 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh Causes of
23 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
24 pursuant to Cal. Code of Civ. Proc. § 382;
25 B) Compensatory damages, according to proof at trial, including compensatory
26 damages for minimum and overtime compensation due PLAINTIFFS and the
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1 other members of the CALIFORNIA LABOR SUB-CLASS, during the
2 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
3 at the statutory rate;

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

9 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
10 the applicable IWC Wage Order;

11 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
12 1197; and,

13 F) The amount of the expenses PLAINTIFFS and each member of the
14 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
15 plus interest, and costs of suit;

16
17 3. On behalf of Plaintiff Nunez for the Eighth and Ninth Causes of Action:

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

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

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

26 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004.
28

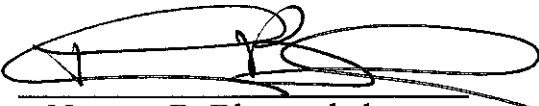
1 5. On all claims:

- 2 A) An award of interest, including prejudgment interest at the legal rate;
- 3 B) Such other and further relief as the Court deems just and equitable; and,
- 4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 5 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
- 6 §2802.
- 7

8 Dated: May 10, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

9

10 By: 

11 Norman B. Blumenthal

12 Nicholas J. De Blouw

13 JACKSON LAW, APC

14 Armond M. Jackson (State Bar #281547)

15 *Attorneys for Plaintiffs*

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