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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

DIANA MENDOZA, an individual, on
behalf of herself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

HUMAN BEES, INC., a California
Corporation; and Does 1 through 50,
Inclusive;

Defendants.

Case No. STK-CV-00E-2021-2678

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
8. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT is a staffing agency. In addition to seven other California
10 locations, DEFENDANT’s headquarters are in San Joaquin County where PLAINTIFF worked
11 for DEFENDANT.

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

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

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

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

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

25 ///

26 ///

THE CONDUCT

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

9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to show up before her scheduled shift to perform duties such as putting on her

1 uniform. Additionally, at the conclusion of her work, PLAINTIFF was instructed to clock-out
2 before changing out of her uniform. Additionally, PLAINTIFF worked during what was
3 supposed to be her off-duty meal break. PLAINTIFF was from time to time interrupted by work
4 assignments and specifically told that she was not allowed to leave DEFENDANT's premises
5 during meal and rest breaks. Additionally, there were days when PLAINTIFF did not even
6 receive a partial lunch. As a result, PLAINTIFF and other CALIFORNIA CLASS Members
7 forfeited minimum wage and overtime compensation by working without their time being
8 accurately recorded and without compensation at the applicable minimum wage and overtime
9 rates. To the extent that the time worked off the clock did not qualify for overtime premium
10 payment, DEFENDANT failed to pay minimum wages for the time worked off-the-clock in
11 violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

16 11. The second component of PLAINTIFF's and other CALIFORNIA CLASS
17 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
18 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
19 performance for DEFENDANT. The non-discretionary incentive program provided all
20 employees paid on an hourly basis with incentive compensation when the employees met the
21 various performance goals set by DEFENDANT. However, when calculating the regular rate
22 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
23 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
24 rate of pay" for purposes of calculating overtime pay. Specifically, including but not limited
25 to, a non-discretionary bonus ("BONUS") which can be found on PLAINTIFF's wage
26 statements. Management and supervisors described the incentive program to potential and new
27 employees as part of the compensation package. As a matter of law, the incentive compensation
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1 received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the
2 “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime
3 compensation to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.
4 DEFENDANT also underpaid sick pay wages to PLAINTIFF and other CALIFORNIA CLASS
5 Members by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF and
6 other non-exempt employees earn non-discretionary remuneration. Rather than pay sick pay at
7 the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
8 CALIFORNIA CLASS Members at their base rates of pay.

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

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

23 15. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
24 employees with an accurate itemized wage statement in writing showing, among other things,
25 gross wages earned and all applicable hourly rates in effect during the pay period and the
26 corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT failed
27 to list the correct name and address of the legal entity that was the employer in violation of Cal.
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1 Lab. Code Section 226(a)(8). DEFENDANT also from time to time failed to provide to
2 PLAINTIFF and the CALIFORNIA CLASS wage statements that identify the correct gross and
3 net wages earned, the applicable number of hours worked and rates of pay. Aside, from the
4 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF and other
5 CALIFORNIA CLASS members an itemized wage statement that lists all the requirements
6 under California Labor Code 226 *et seq.*

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

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

18 **JURISDICTION AND VENUE**

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

23 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
25 maintained offices and facilities in this County and/or conducts substantial business in this
26 County, and (ii) committed the wrongful conduct herein alleged in this County against members
27 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.
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1 **THE CALIFORNIA CLASS**

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

11 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA
12 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
13 accordingly.

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

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

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

18 25. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
19 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
20 employee for all overtime worked at the applicable rate, as required by California Labor Code
21 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
22 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
23 as to include all earnings in the overtime compensation calculation as required by California
24 Labor Code §§ 510, *et seq.*

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

27 27. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
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1 law by:

- 2 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
3 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
4 place company policies, practices and procedures that failed to pay all
5 minimum and overtime wages due the CALIFORNIA CLASS for all time
6 worked, and failed to accurately record the applicable rates of all overtime
7 worked by the CALIFORNIA CLASS;
- 8 (b) Committing an act of unfair competition in violation of the California
9 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
10 unlawfully, unfairly, and/or deceptively having in place a company policy,
11 practice and procedure that failed to correctly calculate overtime
12 compensation due to PLAINTIFF and the members of the CALIFORNIA
13 CLASS;
- 14 (c) Committing an act of unfair competition in violation of the California
15 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
16 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
17 *seq.*, by failing to pay the correct federal overtime wages to the
18 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
19 required by the FLSA, and retaining the unpaid federal overtime to the
20 benefit of DEFENDANT; and,
- 21 (d) Committing an act of unfair competition in violation of the California
22 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
23 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
24 the CALIFORNIA CLASS members.

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

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

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

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

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

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

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

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS which would establish
9 incompatible standards of conduct for the parties opposing the
10 CALIFORNIA CLASS; and/or,

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

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

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

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

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

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

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

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

3) In the context of wage litigation because a substantial number of

individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

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

30. 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 CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (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 CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA 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 CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA 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 CLASS;

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

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

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

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

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

THE CALIFORNIA LABOR SUB-CLASS

32. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action on behalf of a California sub-class, defined as all members of the

1 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
2 SUB-CLASS”) at any time during the period beginning on the date three (3) years prior to the
3 filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA
4 LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in
5 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
6 five million dollars (\$5,000,000.00).

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

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

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

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

- 1 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
2 overtime compensation to members of the CALIFORNIA LABOR SUB-
3 CLASS in violation of the California Labor Code and California
4 regulations and the applicable California Wage Order;
- 5 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
6 entitled to overtime compensation for overtime worked under the overtime
7 pay requirements of California law;
- 8 (c) Whether DEFENDANT failed to accurately record the applicable
9 overtime rates for all overtime worked PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS;
- 11 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS with legally
13 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 14 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS with accurate
16 itemized wage statements;
- 17 (f) Whether DEFENDANT has engaged in unfair competition by the
18 above-listed conduct;
- 19 (g) The proper measure of damages and penalties owed to the members of the
20 CALIFORNIA LABOR SUB-CLASS; and,
- 21 (h) Whether DEFENDANT's conduct was willful.

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

3 38. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
4 under California law by:

- 5 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
6 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
7 CLASS the correct overtime pay for which DEFENDANT is liable
8 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 9 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
10 accurately pay PLAINTIFF and the members of the CALIFORNIA
11 LABOR SUB-CLASS the correct minimum wage pay for which
12 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 13 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
16 meal breaks and the legally required rest breaks; and,
- 17 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
18 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
19 itemized statement in writing showing all accurate and applicable
20 overtime rates in effect during the pay period and the corresponding
21 amount of time worked at each overtime rate by the employee; and,
- 22 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
23 when an employee is discharged or quits from employment, the employer
24 must pay the employee all wages due without abatement, by failing to
25 tender full payment and/or restitution of wages owed or in the manner
26 required by California law to the members of the CALIFORNIA LABOR
27 SUB-CLASS who have terminated their employment.

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

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

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

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

23 (d) The representative PLAINTIFF will fairly and adequately represent and
24 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
25 retained counsel who are competent and experienced in Class Action
26 litigation. There are no material conflicts between the claims of the
27 representative PLAINTIFF and the members of the CALIFORNIA
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1 LABOR SUB-CLASS that would make class certification inappropriate.
2 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
3 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

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

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

1 with DEFENDANT or with a subsequent employer, the Class
2 Action is the only means to assert their claims through a
3 representative; and,

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

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

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

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

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

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

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

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21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

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

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

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

3 44. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
4 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
5 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
6 competition as follows:

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

11 Cal. Bus. & Prof. Code § 17203.

12 45. 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 Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, The Fair Labor
16 Standards Act and federal regulations promulgated thereunder, for which this Court should
17 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may
18 be necessary to prevent and remedy the conduct held to constitute unfair competition, including
19 restitution of wages wrongfully withheld.

20 46. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
21 unfair in that these practices violated 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 wrongfully
25 withheld.

26 47. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
27 fraudulent in that DEFENDANT’s policy and practice failed to pay PLAINTIFF, and other
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1 members of the CALIFORNIA CLASS, minimum and overtime wages for all time worked,
2 failed to accurately to record the applicable rate of all overtime worked, failed to pay reporting
3 time wages owed, failed to reimburse necessary business expenses incurred, and failed to
4 provide the required amount of overtime compensation due to a miscalculation of the overtime
5 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
6 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
7 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
8 including restitution of wages wrongfully withheld.

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

13 49. By the conduct alleged herein, DEFENDANT's practices were also unfair and
14 deceptive in that DEFENDANT's policies, practices and procedures failed to provide
15 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

16 50. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
18 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
19 for each workday in which a second off-duty meal period was not timely provided for each ten
20 (10) hours of work.

21 51. PLAINTIFF further demands on behalf of herself and on behalf of each
22 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty
23 paid rest period was not timely provided as required by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

For Failure To Pay Minimum Wages

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

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

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

1 paragraphs of this Complaint.

2 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
3 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
4 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
5 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
6 CALIFORNIA CLASS Members.

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

9 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
10 commission is the minimum wage to be paid to employees, and the payment of a less wage than
11 the minimum so fixed is unlawful.

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

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

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

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

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

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

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

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

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

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

15
16 **FOURTH CAUSE OF ACTION**

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

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

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

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

24 88. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
27 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR

1 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
2 duties for the legally required off-duty meal periods. As a result of their rigorous work
3 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
4 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
5 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
6 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
7 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF
8 and CALIFORNIA LABOR SUB-CLASS Members with a second off-duty meal period from
9 time to time in which these employees were required by DEFENDANT to work ten (10) hours
10 of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
11 CLASS therefore forfeited meal breaks without additional compensation and in accordance with
12 DEFENDANT's corporate policy and practice.

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

18 90. As a proximate result of the aforementioned violations, PLAINTIFF and
19 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
20 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
21 suit.

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

25 94. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
27 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
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1 suit.

2 **SIXTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code § 226]**

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

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

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

12 (1) gross wages earned,

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

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

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

21 (5) net wages earned,

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

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

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

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

3 97. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
4 employees with an accurate itemized wage statement in writing showing, among other things,
5 gross wages earned and all applicable hourly rates in effect during the pay period and the
6 corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT failed
7 to list the correct name and address of the legal entity that was the employer in violation of Cal.
8 Lab. Code Section 226(a)(8). DEFENDANT also from time to time failed to provide to
9 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS wage statements that identify the
10 correct gross and net wages earned, the applicable number of hours worked and rates of pay.
11 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
12 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS members an itemized wage
13 statement that lists all the requirements under California Labor Code 226 *et seq.*

14 98. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
15 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
17 expended calculating the correct rates for the overtime worked and the amount of employment
18 taxes which were not properly paid to state and federal tax authorities. These damages are
19 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
20 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
21 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
22 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
23 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
24 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

10 As used in this article:

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

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

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

20 102. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

104. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
who is discharged or who quits, the wages of the employee shall continue as a
penalty from the due date thereof at the same rate until paid or until an action

1 therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

11 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

27 109. PLAINTIFF, and such persons that may be added from time to time who satisfy
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1 the requirements and exhaust the administrative procedures under the Private Attorney General
2 Act, brings this Representative Action on behalf of the State of California with respect to
3 herself and all individuals who are or previously were employed by DEFENDANT in California
4 and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time
5 period of January 6, 2020 until a date as determined by the Court (the "PAGA PERIOD").

6 110. On January 6, 2021, PLAINTIFF gave written notice by electronic mail to the
7 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
10 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
11 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
12 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

13 111. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
16 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
17 to pay minimum wages, and (e) failed to provide wages when due, all in violation of the
18 applicable Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*,
19 210, 226(a), 226.7, 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 Industrial
21 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹
22 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
23 Attorney General Act of 2004 as the representative of the State of California for the illegal
24 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

25 112. All of the conduct and violations alleged herein occurred during the
26 _____

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

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the CALIFORNIA CLASS:

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

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

- 20 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
21 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
22 pursuant to Cal. Code of Civ. Proc. § 382;
23 B) Compensatory damages, according to proof at trial, including compensatory
24 damages for overtime compensation due PLAINTIFF and the other members of
25 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
26 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
27 C) Meal and rest period compensation pursuant to California Labor Code Section
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226.7 and the applicable IWC Wage Order;

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

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

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

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

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

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

4. On all claims:

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

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

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the

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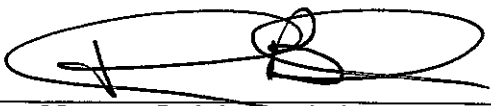
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1 law, including, but not limited to, pursuant to Labor Code §226, and/or §1194.

2
3 Dated: March 24, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

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6 By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: March 24, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____



Norman B. Blumenthal
Attorneys for Plaintiff