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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAY 27 2021

L. VILLANUEVA

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

13 **IN AND FOR THE COUNTY OF RIVERSIDE**

CVRI 2102436

14 MARIA ZAMBRANO, an individual, on
15 behalf of herself and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 TUDOR RANCH, INC., a California
20 Corporation; and Does 1 through 50,
21 Inclusive,

22 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

1 Plaintiff Maria Zambrano (“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 Tudor Ranch, 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 specializes in the growing, packaging and distribution of grapes.
10 Founded in the 1940's, DEFENDANT's headquarters are in Riverside County where
11 PLAINTIFF worked 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 September of 2019 to
14 November of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
15 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
16 received additional compensation from DEFENDANT in the form of non-discretionary
17 incentive wages.

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

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

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

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

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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. 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. Moreover, DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid for actual recorded time rather than “rounded” time. 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, before arriving at work and

1 clocking in for the day, Plaintiff was asked to purchase and deliver the appropriate goods in
2 order to complete her second job task as DEFENDANT's de-facto chef. As such, Plaintiff
3 would drive to the local grocery stores in the mornings before her shift began to purchase
4 food. From there, Plaintiff would often arrive early to begin cooking, often long before she
5 clocked in for the day. Additionally, PLAINTIFF worked during what was supposed to be
6 her off-duty meal break. PLAINTIFF was from time to time interrupted by work
7 assignments. Specifically, there was no answering machine service and only three
8 employees available to accommodate people who walked in so PLAINTIFF was asked to
9 jump to action during various breaks to accommodate phone calls and/or visitors.
10 Additionally, there was no break room nor was there an option of going outside as the
11 temperature usually stretched beyond 100 degrees. With no shaded area to sit and no break
12 room indoors, PLAINTIFF had no place to take an appropriate break. As such, Plaintiff
13 remained on call and was expected to perform various job duties during her supposed
14 breaks. Indeed, there were days where PLAINTIFF did not even receive a partial lunch. As
15 a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage
16 and overtime compensation by working without their time being accurately recorded and
17 without compensation at the applicable minimum wage and overtime rates. To the extent
18 that the time worked off the clock did not qualify for overtime premium payment,
19 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation
20 of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

21
22 10. State and federal law provides that employees must be paid overtime at one-
23 and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA
24 CLASS Members were compensated at an hourly rate plus incentive pay that was tied to
25 specific elements of an employee's performance.

26 11. The second component of PLAINTIFF's and other CALIFORNIA CLASS
27 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
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1 PLAINTIFF 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
5 rate of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS
6 Members, DEFENDANT failed to include the incentive compensation (“TRI Loyalty
7 Bonus”) as part of the employees’ “regular rate of pay” for purposes of calculating overtime
8 pay. Management and supervisors described the incentive program to potential and new
9 employees as part of the compensation package. As a matter of law, the incentive
10 compensation received by PLAINTIFF and other CALIFORNIA CLASS Members must be
11 included in the “regular rate of pay.” The failure to do so has resulted in a underpayment of
12 overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by
13 DEFENDANT. DEFENDANT also underpays sick pay wages to PLAINTIFF and other
14 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay.
15 Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
16 remuneration, including but not limited to, incentives, shift differential pay, and bonuses.
17 Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to
18 PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

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

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

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

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

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

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

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

22 19. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation
23 to her in the form of two components. One component of PLAINTIFF's compensation was
24 a base hourly wage. The second component of PLAINTIFF's compensation were non-
25 discretionary incentive wages. DEFENDANT paid the incentive wages, so long as
26 PLAINTIFF met certain predefined performance requirements. PLAINTIFF met
27 DEFENDANT's predefined eligibility performance requirements in various pay periods
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1 throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF the
2 non-discretionary incentive wages. During these pay periods in which PLAINTIFF was
3 paid the non-discretionary incentive wages by DEFENDANT, PLAINTIFF also worked
4 overtime for DEFENDANT, but DEFENDANT never included the incentive compensation
5 (“TRI Loyalty Bonus”) in PLAINTIFF’s regular rate of pay for the purposes of calculating
6 what should have been PLAINTIFF’s accurate overtime rate and thereby underpaid
7 PLAINTIFF for overtime worked throughout her employment with DEFENDANT. The
8 incentive compensation paid by DEFENDANT constituted wages within the meaning of the
9 California Labor Code and thereby should have been part of PLAINTIFF’s “regular rate of
10 pay.” PLAINTIFF was also from time to time unable to take off duty meal and rest breaks
11 and was not fully relieved of duty for her meal periods. PLAINTIFF was required to
12 perform work as ordered by DEFENDANT for more than five (5) hours during a shift
13 without receiving an off-duty meal break. Further, DEFENDANT failed to provide
14 PLAINTIFF with a second off-duty meal period from time to time in which he was required
15 by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
16 and rest breaks without additional compensation and in accordance with DEFENDANT’s
17 corporate policy and practice. DEFENDANT also provided PLAINTIFF with a pay stub
18 that failed to accurately display PLAINTIFF’s correct net and gross wages earned and all
19 hourly rates for certain pay periods in violation of Cal. Lab. Code § 226(a). To date,
20 DEFENDANT has not fully paid PLAINTIFF the wage compensation still owed to her or
21 any penalty wages owed to her under Cal. Lab. Code § 203. Prior to filing this action,
22 PLAINTIFF exhausted her administrative remedies by filing a timely administrative
23 complaint with the Department of Fair Employment and Housing (“DFEH”) and received a
24 DFEH right-to-sue letter on December 28th, 2020.

25 **JURISDICTION AND VENUE**

26 20. This Court has jurisdiction over this Action pursuant to California Code of
27 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
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1 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
2 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 21. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant
5 times maintained offices and facilities in this County and/or conducts substantial business in
6 this County, and (ii) committed the wrongful conduct herein alleged in this County against
7 members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

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9 **THE CALIFORNIA CLASS**

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

19 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA
20 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
21 accordingly.

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

1 from the requirement that an overtime rate of compensation be paid... ...for executive,
2 administrative, and professional employees, provided [inter alia] that the employee is
3 primarily engaged in duties that meet the test of the exemption, [and] customarily and
4 regularly exercises discretion and independent judgment in performing those duties...”
5 (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members of the CALIFORNIA
6 CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for exemption from the
7 above requirements.

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

15 26. DEFENDANT has the legal burden to establish that each and every
16 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
17 accurately calculate the “regular rate of pay” by including the incentive compensation that
18 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
19 DEFENDANT, however, as a matter of policy and procedure failed to have in place during
20 the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to
21 ensure that each and every CALIFORNIA CLASS Member is paid the applicable overtime
22 rate for all overtime worked, so as to satisfy their burden. This common business practice
23 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
24 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
25 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
26 claim.

27 27. At no time during the CALIFORNIA CLASS PERIOD was the compensation
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1 for any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
2 employee for all overtime worked at the applicable rate, as required by California Labor
3 Code §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was
4 the overtime compensation for any member of the CALIFORNIA CLASS properly
5 recalculated so as to include all earnings in the overtime compensation calculation as
6 required by California Labor Code §§ 510, *et seq.*

7 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 29. DEFENDANT violated the rights of the CALIFORNIA CLASS under
10 California law by:

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

(d) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members; and,

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

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

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

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

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was subjected to the employment practices of DEFENDANT and was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANT's practice and policy which fails to pay the correct rate of overtime wages due to the

1 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
2 CLASS and thereby underpays overtime compensation to the
3 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
4 result of DEFENDANT's employment practices. PLAINTIFF and the
5 members of the CALIFORNIA CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive and unfair
7 misconduct engaged in by DEFENDANT; and,

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

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

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

- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
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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. Including the correct overtime rate, for all worked by the members of the CALIFORNIA CLASS as required by law;

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

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

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

1 losses sustained by the individual CALIFORNIA CLASS
2 Members when compared to the substantial expense and burden
3 of individual prosecution of this litigation;

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

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

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

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

22 4) A class action is superior to other available methods for the fair
23 and efficient adjudication of this litigation because class
24 treatment will obviate the need for unduly and unnecessary
25 duplicative litigation that is likely to result in the absence of
26 certification of this action pursuant to Cal. Code of Civ. Proc. §
27 382.

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

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

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

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

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

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

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

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

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

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

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

- 19 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
20 overtime compensation to members of the CALIFORNIA LABOR
21 SUB-CLASS in violation of the California Labor Code and California
22 regulations and the applicable California Wage Order;
- 23 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
24 entitled to overtime compensation for overtime worked under the
25 overtime pay requirements of California law;
- 26 (c) Whether DEFENDANT failed to accurately record the applicable
27 overtime rates for all overtime worked PLAINTIFF and the other
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members of the CALIFORNIA LABOR SUB-CLASS;

- (d) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- (e) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (f) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (g) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (h) Whether DEFENDANT's conduct was willful.

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

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

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to

1 accurately pay PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS the correct minimum wage pay for which
3 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

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

8 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
9 the members of the CALIFORNIA LABOR SUB-CLASS with an
10 accurate itemized statement in writing showing all accurate and
11 applicable overtime rates in effect during the pay period and the
12 corresponding amount of time worked at each overtime rate by the
13 employee;

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

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

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

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

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

7 (c) The claims of the representative PLAINTIFF are typical of the claims
8 of each member of the CALIFORNIA LABOR SUB-CLASS.

9 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
10 SUB-CLASS, was a non-exempt employee paid on an hourly basis and
11 paid additional non-discretionary incentive wages who was subjected to
12 the DEFENDANT's practice and policy which failed to pay the correct
13 rate of overtime wages due to the CALIFORNIA LABOR SUB-
14 CLASS for all overtime worked. PLAINTIFF sustained economic
15 injury as a result of DEFENDANT's employment practices.

16 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
17 CLASS were and are similarly or identically harmed by the same
18 unlawful, deceptive and unfair misconduct engaged in by
19 DEFENDANT; and,

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

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

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

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

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

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

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

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

1 Action is the only means to assert their claims through a
2 representative; and,

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

9 43. This Court should permit this action to be maintained as a Class Action
10 pursuant 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
15 and efficient adjudication of the claims of the members of the
16 CALIFORNIA LABOR SUB-CLASS because in the context of
17 employment litigation a substantial number of individual
18 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
19 their rights individually out of fear of retaliation or adverse impact on
20 their employment;
- 21 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
22 numerous that it is impractical to bring all members of the
23 CALIFORNIA LABOR SUB-CLASS before the Court;
- 24 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
25 Members, will not be able to obtain effective and economic legal
26 redress unless the action is maintained as a Class Action;
- 27 (e) There is a community of interest in obtaining appropriate legal and
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1 equitable relief for the acts of unfair competition, statutory violations
2 and other improprieties, and in obtaining adequate compensation for
3 the damages and injuries which DEFENDANT's actions have inflicted
4 upon the CALIFORNIA LABOR SUB-CLASS;

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

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

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

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

21
22 **FIRST CAUSE OF ACTION**

23 **For Unlawful Business Practices**

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

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

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

1 Complaint.

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

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

8 Any person who engages, has engaged, or proposes to engage in unfair
9 competition may be enjoined in any court of competent jurisdiction. The court
10 may make such orders or judgments, including the appointment of a receiver, as
11 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.

12 Cal. Bus. & Prof. Code § 17203.

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

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

27 49. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
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1 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
2 members of the CALIFORNIA CLASS, minimum and overtime wages for all time worked,
3 failed to accurately to record the applicable rate of all overtime worked, failed to pay reporting
4 time wages owed, failed to reimburse necessary business expenses incurred, failed to provide
5 the required amount of overtime compensation due to a miscalculation of the overtime rate that
6 cannot be justified, and failed to pay Fair Labor Standards Act overtime wages due for overtime
7 worked as a result of failing to include non-discretionary incentive compensation into their
8 regular rate for purposes of computing the proper overtime pay, pursuant to the applicable Cal.
9 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
10 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
11 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

20 58. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
21 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
22 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
23 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
24 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
25 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
26 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 65. 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 66. 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 67. 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 68. 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 69. 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 70. 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 71. 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 72. 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.

73. 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.

74. 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)**

75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 81. 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 82. 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
28

1 requirements and other applicable laws and regulations.

2 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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 89. 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 90. 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
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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 91. 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 92. 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.

22
23 **FIFTH CAUSE OF ACTION**

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

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

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

93. 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 paragraphs of this Complaint.

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

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

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

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number of hours worked at each hourly rate by the employee.

99. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. DEFENDANT from time to time failed to provide to PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS wage statements that identify the correct gross and net wages earned, the applicable number of hours worked and rates of pay. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS members an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

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

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1 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required
2 to do under the laws and regulations of California.

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

7
8 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

17 As used in this article:

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

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

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

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

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

1 mailing shall constitute the date of payment for purposes of the requirement to
2 provide payment within 72 hours of the notice of quitting.

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

5 110. Cal. Lab. Code § 203 provides:

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

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

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

20 **NINTH CAUSE OF ACTION**

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

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

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

25 114. PLAINTIFF's wrongful termination in November of 2020 was for a pretextual
26 reason(s) to disguise DEFENDANT's unlawful employment practices directed at PLAINTIFF.

27 115. Within the State of California there exists a substantial and fundamental public
28 policy, set forth in the California Government Code § 12900 et seq., which forbids racial and/or
national origin harassment/racial discrimination, age discrimination, retaliation, and wrongful

1 termination. Unlawful harassment includes the right to be free from unwanted, offensive racial
2 harassment, and the right to protest such conduct without fear of retaliation or further harm.
3 This public policy of the state is one that benefits the public at large and guarantees the rights
4 of an employee to perform their work free from racial harassment/discrimination/retaliation.

5 116. The motivating reason(s) for PLAINTIFF's termination was discrimination due
6 to PLAINTIFF's age and PLAINTIFF's protests and/or resistance thereof. PLAINTIFF's
7 discharge from her position of employment was in violation of the public policies of the State
8 of California.

9 117. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial
10 losses in earnings and employment benefits and emotional distress in an amount to be
11 determined according to proof at trial.

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

16 **TENTH CAUSE OF ACTION**
17 **For Violation of Government Code §12940(a) - Age Discrimination**
18 **(By PLAINTIFF Against All Defendants)**

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

21 120. PLAINTIFF was employed by DEFENDANT.

22 121. DEFENDANT is an employer covered by Government Code §12940 *et seq.*

23 122. PLAINTIFF was terminated from her employment and/or suffered other
24 adverse employment actions.

25 123. Prior to her termination in November of 2020, PLAINTIFF reported to
26 DEFENDANT that Dina Garcia was treating her in a disrespectful manner about her age
27

1 while encouraging her to find employment elsewhere. Additionally, PLAINTIFF spoke to
2 DEFENDANT about her inadequate and often interrupted breaks periods and
3 DEFENDANT's lack of a break room. PLAINTIFF was terminated shortly after making
4 these complaints. PLAINTIFF's age as a 53 year-old female was a substantial motivating
5 reason(s) for her termination and other adverse employment actions, including termination
6 of her employment.

7 124. As a result of DEFENDANT's conduct, PLAINTIFF has suffered substantial
8 losses in earnings and employment benefits and emotional distress in an amount to be
9 determined according to proof at trial.

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

14
15 **ELEVENTH CAUSE OF ACTION**

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

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

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

19 126. PLAINTIFF incorporates by reference the allegations set forth in the prior
20 paragraphs as though fully set forth at this point.

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

5 128. PLAINTIFF, and such persons that may be added from time to time who
6 satisfy the requirements and exhaust the administrative procedures under the Private
7 Attorney General Act, brings this Representative Action on behalf of the State of California
8 with respect to herself and all individuals who worked for DEFENDANT in California and
9 classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time
10 period of January 6, 2020 until a date as determined by the Court (the "PAGA PERIOD").

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

18 130. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
21 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
22 wages, (d) failed to pay minimum wages, (e) failed to reimburse for required expenses, and
23 (f) failed to pay wages when due, all in violation of the applicable Labor Code sections
24 listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
25 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
26 Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and
27

1 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks
2 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of
3 2004 as the representative of the State of California for the illegal conduct perpetrated on
4 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

5 131. All of the conduct and violations alleged herein occurred during the PAGA
6 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
7 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
8 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
9 2018 AJDAR 12157 (Certified for Publication 12/19/18).

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

- 15 A) That the Court certify the First Cause of Action asserted by the
16 CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
17 Proc. § 382;
18 B) An order temporarily, preliminarily and permanently enjoining and
19 restraining DEFENDANT from engaging in similar unlawful conduct
20 as set forth herein;
21 C) An order requiring DEFENDANT to pay all wages and all sums
22 unlawfully withheld from compensation due to PLAINTIFF and the
23 other members of the CALIFORNIA CLASS; and,
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25
26
27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code
28 §558(a)(3).

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

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

6 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh
7 and Eighth Causes of Action asserted by the CALIFORNIA LABOR
8 SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. §
9 382;

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

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

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

23 E) The amount of the expenses PLAINTIFF and each member of the
24 CALIFORNIA LABOR SUBCLASS incurred in the course of their job
25 duties, plus interest, and costs of suit;
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1 F) For liquidated damages pursuant to California Labor Code Sections
2 1194.2 and 1197;

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

7
8 3. On behalf of the Ninth and Tenth Causes of Action:

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

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

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

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

19 5. On all claims:

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

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

22 C) An award of penalties, attorneys' fees and cost of suit, as allowable
23 under the law, including, but not limited to, pursuant to Labor Code

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1 §226, §1194 and/or §2802.
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3 Dated: May 26, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
4 DE BLOUW LLP
5

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By: _____

7 Norman B. Blumenthal
8 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: May 26, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff