

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

MARIA ZAMBRANO and ALFONSO
PEREZ URIBE, individually, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No. **CVRI 2102436**

**FIRST AMENDED 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 Plaintiffs Maria Zambrano and Alfonso Perez Uribe (“PLAINTIFFS”), individually, on
2 behalf of themselves and all other similarly situated current and former employees, allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

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6 **THE PARTIES**

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

10 2. DEFENDANT specializes in the growing, packaging and distribution of grapes.
11 Founded in the 1940's, DEFENDANT's headquarters are in Riverside County where
12 PLAINTIFF worked for DEFENDANT.

13 3. Plaintiff Maria Zambrano was employed by DEFENDANT in California as a non-
14 exempt employee entitled to overtime pay and meal and rest periods from September of 2019
15 to November of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
16 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
17 received additional compensation from DEFENDANT in the form of non-discretionary
18 incentive wages.

19 4. Plaintiff Alfonso Perez Uribe was employed by DEFENDANT in California as
20 a non-exempt employee entitled to overtime pay and meal and rest periods from approximately
21 June of 2013 to January of 2020. Plaintiff Alfonso Perez Uribe was at all times relevant
22 mentioned herein classified by DEFENDANT as a non-exempt employee working as a picker,
23 scaler, and box-maker.

24 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
25 class, defined as all individuals who are or previously were employed by DEFENDANT in
26 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
27 during the period beginning on the date four (4) years prior to the filing of this Complaint and
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1 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The
2 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
3 million dollars (\$5,000,000.00).

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

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

24 8. The agents, servants and/or employees of the Defendants and each of them acting
25 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
26 agent, servant and/or employee of the Defendants, and personally participated in the conduct
27 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
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1 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
2 all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
4 Defendants' agents, servants and/or employees.

5 6 **THE CONDUCT**

7 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
8 to fail to accurately calculate and pay PLAINTIFFS and the other members of the
9 CALIFORNIA CLASS for their minimum and overtime wages and the correct rate for meal
10 premiums, rest premiums, and paid rest periods. DEFENDANT unlawfully and unilaterally
11 failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFFS
12 and other members of the CALIFORNIA CLASS as well as the correct rates for meal
13 premiums, rest premiums, and paid rest periods in order to avoid paying these employees the
14 correct compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA
15 CLASS forfeited wages due them for working without compensation at the correct minimum
16 wage and overtime rates. Moreover, DEFENDANT, as a matter of established company policy
17 and procedure, administers a uniform practice of rounding the actual time worked and recorded
18 by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT,
19 so that during the course of their employment, PLAINTIFFS and CALIFORNIA CLASS
20 Members are paid less than they would have been paid had they been paid for actual recorded
21 time rather than "rounded" time. DEFENDANT's policy and practice to not pay the members
22 of the CALIFORNIA CLASS the correct compensation for all time worked in accordance with
23 applicable law is evidenced by DEFENDANT's business records. This policy and practice of
24 DEFENDANT was intended to purposefully avoid the payment of the correct compensation as
25 required by California law which allowed DEFENDANT to illegally profit and gain an unfair
26 advantage over competitors who complied with the law.

27 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
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1 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
2 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
3 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
4 all time worked, meaning the time during which an employee was subject to the control of an
5 employer, including all the time the employee was permitted or suffered to permit this work.
6 DEFENDANT required these employees to work off the clock without paying them for all the
7 time they were under DEFENDANT's control. As a result, PLAINTIFF and other
8 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
9 working without their time being accurately recorded and without compensation at the
10 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
11 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
12 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

19 14. Some CALIFORNIA CLASS Members are and were paid on a piece-rate basis,
20 like Plaintiff Alfonso Uribe. The work required to be performed by these CALIFORNIA
21 CLASS Members was manual labor including, but not limited to, picking grapes, scaling
22 grapevines, and boxing and packing grapes in accordance with DEFENDANT’s policies and
23 practices. As a result of this work, Plaintiff Uribe and the other CALIFORNIA CLASS
24 Members were involved in providing day to day routine manual labor with respect to the
25 growing and packaging of grapes as specified by DEFENDANT and this work was executed
26 by the performance of manual labor within a defined skill set. Plaintiff Uribe and
27 CALIFORNIA CLASS Members were not compensated through a monthly salary. Plaintiff
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1 Uribe and the other CALIFORNIA CLASS Members employed by DEFENDANT performed
2 these manual tasks but were not paid the minimum wages to which they were entitled because
3 of DEFENDANT's systematic policies and practices of failing to correctly record all time
4 worked. DEFENDANT failed to correctly pay minimum wages to Plaintiff Uribe and the other
5 CALIFORNIA CLASS Members in accordance with California law, and thereby systematically
6 underpaid minimum compensation to Plaintiff Uribe and the other CALIFORNIA CLASS
7 Members for their documented time worked. The CALIFORNIA CLASS Members based on
8 a piece-rate basis are and were employees who are entitled to minimum wage compensation and
9 prompt payment of amounts that the employer owes an employee when the employee quits or
10 is terminated, and other compensation and working conditions that are prescribed by law.

11 15. Some CALIFORNIA CLASS Members were paid on a piece-rate basis, including
12 Plaintiff Uribe. Because of DEFENDANT's piece rate pay plan, DEFENDANT failed to
13 compensate Plaintiff Uribe and CALIFORNIA CLASS Members for their rest periods as
14 required by the applicable Wage Order and Labor Code. DEFENDANT did not have a policy
15 or practice which properly paid for off-duty rest periods to Plaintiff Uribe and the other
16 CALIFORNIA CLASS Members. As a result, DEFENDANT's failure from time to time to
17 provide Plaintiff Uribe and the CALIFORNIA CLASS Members with all the legally required
18 paid rest periods is evidenced by DEFENDANT's business records.

19 16. As a result of their rigorous work schedules, PLAINTIFFS and other
20 CALIFORNIA CLASS Members were from time to time unable to take off duty meal breaks
21 and were not fully relieved of duty for meal periods. PLAINTIFFS and other CALIFORNIA
22 CLASS Members were from time to time required to perform work as ordered by
23 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
24 break. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS
25 Members with a second off-duty meal period from time to time in which these employees were
26 required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS and the other
27 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
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1 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

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

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

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

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

13 23. Specifically as to Plaintiff Uribe, DEFENDANT failed to provide all the legally
14 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
15 Labor Code and failed to pay him all minimum and overtime wages due to her. DEFENDANT
16 did not have a policy or practice which provided timely off-duty meal and rest breaks to
17 Plaintiff Uribe and also failed to compensate Plaintiff Uribe for missed meal and rest breaks at
18 the correct rate. The nature of the work performed by Plaintiff Uribe did not prevent him from
19 being relieved of all of his duties for the legally required off-duty meal periods. As a result,
20 DEFENDANT's failure to provide Plaintiff Uribe with the legally required meal periods is
21 evidenced by DEFENDANT's business records. As a result of DEFENDANT not accurately
22 recording all missed meal and rest period premiums and/or minimum and overtime wages due,
23 the wage statements issued to Plaintiff Uribe by DEFENDANT violated California law, and in
24 particular, Labor Code Section 226(a). To date, DEFENDANT has yet to pay Plaintiff Uribe
25 all of her wages due to him and DEFENDANT has failed to pay any penalty wages owed to him
26 under California Labor Code Section 203.

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JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

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

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

28. The California Legislature has commanded that "all wages... ..earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays", and further that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one

workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” (Lab. Code § 204 and § 510(a).) The California Legislature has also commanded that “[a]ll wages, other than those mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section 1140.4, are due and payable twice during each calendar month, on days designated in advance by the agricultural employer as the regular paydays” and further that “any person employed in an agricultural occupation shall not be employed more than nine and one-half hours in any one workday or work in excess of 55 hours in any one workweek, unless the employee receives one and one-half times that employee’s regular rate of pay for all hours worked over nine and one-half hours in any workday or over 55 hours in any workweek.” (Lab. Code § 205.5 and § 860). The Industrial Welfare Commission (IWC), however, is statutorily authorized to “establish exemptions from the requirement that an overtime rate of compensation be paid... ..for executive, administrative, and professional employees, provided [inter alia] that the employee is primarily engaged in duties that meet the test of the exemption, [and] customarily and regularly exercises discretion and independent judgment in performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFFS nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for exemption from the above requirements.

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

30. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to

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

10 31. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
11 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
12 employee for all overtime worked at the applicable rate, as required by California Labor Code
13 §§ 204, 205.5, 510, *et seq.*, and 860. At no time during the CALIFORNIA CLASS PERIOD
14 was the overtime compensation for any member of the CALIFORNIA CLASS properly
15 recalculated so as to include all earnings in the overtime compensation calculation as required
16 by California Labor Code §§ 510, *et seq.* and 860.

17 32. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 33. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
20 law by:

21 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
23 place company policies, practices and procedures that failed to pay all
24 minimum and overtime wages due the CALIFORNIA CLASS for all time
25 worked, and failed to accurately record the applicable rates of all overtime
26 worked by the CALIFORNIA CLASS;

27 (b) Committing an act of unfair competition in violation of the California
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1 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
2 unlawfully, unfairly, and/or deceptively having in place a company policy,
3 practice and procedure that failed to correctly calculate overtime
4 compensation due to PLAINTIFFS and the members of the
5 CALIFORNIA CLASS;

6 (c) Committing an act of unfair competition in violation of the California
7 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
8 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
9 *seq.*, by failing to pay the correct federal overtime wages to the
10 PLAINTIFFS and the members of the CALIFORNIA CLASS as legally
11 required by the FLSA, and retaining the unpaid federal overtime to the
12 benefit of DEFENDANT.;

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

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

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

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

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

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

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

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

27 (a) Without class certification and determination of declaratory, injunctive,
28

1 statutory and other legal questions within the class format, prosecution of
2 separate actions by individual members of the CALIFORNIA CLASS will
3 create the risk of:

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

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

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

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

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

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

1 with a subsequent employer, the Class Action is the only means to
2 assert their claims through a 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 treatment
5 will obviate the need for unduly and unnecessary duplicative
6 litigation that is likely to result in the absence of certification of
7 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

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

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

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

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

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

23 38. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
24 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
25 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
26 SUB-CLASS") at any time during the period beginning on the date three (3) years prior to the
27 filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA
28

1 LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in
2 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
3 five million dollars (\$5,000,000.00).

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

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

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

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

- 25 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
26 overtime compensation to members of the CALIFORNIA LABOR SUB-
27 CLASS in violation of the California Labor Code and California
28

1 regulations and the applicable California Wage Order;

2 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
3 entitled to overtime compensation for overtime worked under the overtime
4 pay requirements of California law;

5 (c) Whether DEFENDANT failed to accurately record the applicable
6 overtime rates for all overtime worked PLAINTIFFS and the other
7 members of the CALIFORNIA LABOR SUB-CLASS;

8 (d) Whether DEFENDANT failed to provide PLAINTIFFS and the other
9 members of the CALIFORNIA LABOR SUB-CLASS with legally
10 required uninterrupted thirty (30) minute meal breaks and rest periods;

11 (e) Whether DEFENDANT failed to provide PLAINTIFFS and the other
12 members of the CALIFORNIA LABOR SUB-CLASS with accurate
13 itemized wage statements;

14 (f) Whether DEFENDANT has engaged in unfair competition by the
15 above-listed conduct;

16 (g) The proper measure of damages and penalties owed to the members of the
17 CALIFORNIA LABOR SUB-CLASS; and,

18 (h) Whether DEFENDANT's conduct was willful.

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

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

- 2 (a) Violating Cal. Lab. Code §§ 510, *et seq.* and 860, by failing to accurately
3 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
4 CLASS the correct overtime pay for which DEFENDANT is liable
5 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 6 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
7 accurately pay PLAINTIFFS and the members of the CALIFORNIA
8 LABOR SUB-CLASS the correct minimum wage pay for which
9 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 10 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
11 PLAINTIFFS and the other members of the CALIFORNIA LABOR
12 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
13 minute meal breaks and the legally required rest breaks; and,
- 14 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
15 the members of the CALIFORNIA LABOR SUB-CLASS with an
16 accurate itemized statement in writing showing all accurate and applicable
17 overtime rates in effect during the pay period and the corresponding
18 amount of time worked at each overtime rate by the employee;
- 19 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
20 and the CALIFORNIA LABOR SUB-CLASS members with necessary
21 expenses incurred in the discharge of their job duties; and,
- 22 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
23 when an employee is discharged or quits from employment, the employer
24 must pay the employee all wages due without abatement, by failing to
25 tender full payment and/or restitution of wages owed or in the manner
26 required by California law to the members of the CALIFORNIA LABOR
27 SUB-CLASS who have terminated their employment.

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

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

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

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

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

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

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

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

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

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

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and

1 violations of California Law as listed above, and predominate over any
2 question affecting only individual CALIFORNIA LABOR SUB-CLASS
3 Members, and a Class Action is superior to other available methods for
4 the fair and efficient adjudication of the controversy, including
5 consideration of:

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

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

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

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

- 11 (a) The questions of law and fact common to the CALIFORNIA LABOR
12 SUB-CLASS predominate over any question affecting only individual
13 CALIFORNIA LABOR SUB-CLASS Members;
- 14 (b) A Class Action is superior to any other available method for the fair and
15 efficient adjudication of the claims of the members of the CALIFORNIA
16 LABOR SUB-CLASS because in the context of employment litigation a
17 substantial number of individual CALIFORNIA LABOR SUB-CLASS
18 Members will avoid asserting their rights individually out of fear of
19 retaliation or adverse impact on their employment;
- 20 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
21 numerous that it is impractical to bring all members of the CALIFORNIA
22 LABOR SUB-CLASS before the Court;
- 23 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
24 Members, will not be able to obtain effective and economic legal redress
25 unless the action is maintained as a Class Action;
- 26 (e) There is a community of interest in obtaining appropriate legal and
27 equitable relief for the acts of unfair competition, statutory violations and
28

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA LABOR SUB-CLASS;

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

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

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

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

20
21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

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

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

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

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

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

11 Cal. Bus. & Prof. Code § 17203.

12 51. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 204, 205.5, 210, 226.7, 510, 512, 860, 1194, 1197, 1197.1, 1198, 2802, The
16 Fair Labor Standards Act and federal regulations promulgated thereunder, for which this Court
17 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203
18 as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
19 including restitution of wages wrongfully withheld.

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

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

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

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

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

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

26 58. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
28

1 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
2 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

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

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

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

1 **SECOND CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code §§ 204, 205.5, 510, 860, 1194 and 1198]**

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

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

9 64. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
10 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
11 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
12 to accurately calculate the applicable rates for all overtime worked by PLAINTIFFS and other
13 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
14 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
15 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
16 any workweek.

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

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

23 67. Cal. Lab. Code § 205.5 provides that "[a]ll wages, other than those mentioned in
24 Sections 201 and 202, earned by any agricultural employee, as defined in Section 1140.4, are
25 due and payable twice during each calendar month, on days designated in advance by the
26 agricultural employer as the regular pay days."

27 68. Cal. Lab. Code § 860 provides that "any person employed in an agricultural
28

1 occupation shall not be employed more than nine and one-half hours in any one workday or
2 work in excess of 55 hours in any one workweek, unless the employee receives one and
3 one-half times that employee's regular rate of pay for all hours worked over nine and one-half
4 hours in any workday or over 55 hours in any workweek."

5 69. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
6 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
7 Code § 1198 further states that the employment of an employee for longer hours than those
8 fixed by the Industrial Welfare Commission is unlawful.

9 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
10 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
11 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
12 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFFS
13 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
14 correct amount of overtime worked and correct applicable overtime rate for the amount of
15 overtime they worked. As set forth herein, DEFENDANT's policy and practice was to
16 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
18 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
19 all overtime worked.

20 71. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
21 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
22 a policy and practice that denied accurate compensation to PLAINTIFFS and the other
23 members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including, the
24 work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
25 workweek.

26 72. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
28

1 consequently underpaid the actual time worked by PLAINTIFFS and other members of the
2 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
3 payment of all earned wages, and other benefits in violation of the California Labor Code, the
4 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

16 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
17 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
18 that they were entitled to, constituting a failure to pay all earned wages.

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

26 77. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
27 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
28

1 CLASS for the true time they worked, PLAINTIFFS and the other members of the
2 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
3 injury in amounts which are presently unknown to them and which will be ascertained
4 according to proof at trial.

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

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

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

1 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
2 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
3 statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

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

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

8 **and Against All Defendants)**

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

12 82. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
14 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
15 to accurately calculate and pay minimum and reporting time wages to PLAINTIFFS and
16 CALIFORNIA CLASS Members.

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

19 84. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a less wage than
21 the minimum so fixed is unlawful.

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

24 86. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
26 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
27 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
28

1 CALIFORNIA LABOR SUB-CLASS.

2 87. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
3 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
4 a policy and practice that denies accurate compensation to PLAINTIFFS and the other members
5 of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

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

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

27 92. DEFENDANT knew or should have known that PLAINTIFFS and the other
28

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

25 97. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
26 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
27 CLASS Members who were not provided a meal period, in accordance with the applicable
28

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
2 each workday that a meal period was not provided.

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

7
8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 101. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28

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

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

9
10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

18 104. Cal. Labor Code § 226 provides that an employer must furnish employees with
19 an "accurate itemized" statement in writing showing:

20 (1) gross wages earned,

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

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

27 (4) all deductions, provided that all deductions made on written orders of the employee
28

1 may be aggregated and shown as one item,
2 (5) net wages earned,
3 (6) the inclusive dates of the period for which the employee is paid,
4 (7) the name of the employee and his or her social security number, except that by
5 January 1, 2008, only the last four digits of his or her social security number or an
6 employee identification number other than a social security number may be shown on
7 the itemized statement,
8 (8) the name and address of the legal entity that is the employer, and
9 (9) all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate by the employee.

11 105. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
12 her employees with an accurate itemized wage statement in writing showing, among other
13 things, gross wages earned and all applicable hourly rates in effect during the pay period and
14 the corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
15 failed to provide to PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS wage
16 statements that identify the correct gross and net wages earned, the applicable number of hours
17 worked and rates of pay. Aside, from the violations listed above in this paragraph,
18 DEFENDANT failed to issue to PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
19 members an itemized wage statement that lists all the requirements under California Labor Code
20 226 *et seq.*

21 106. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
22 Code § 226, causing injury and damages to the PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct rates for the overtime worked and the amount of employment
25 taxes which were not properly paid to state and federal tax authorities. These damages are
26 difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA
27 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
28

1 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
2 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
3 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
4 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS
5 herein).

6
7 **SEVENTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 2802]**

10 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
11 **Defendants)**

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

15 108. Cal. Lab. Code § 2802 provides, in relevant part, that:

16 An employer shall indemnify his or her employee for all necessary expenditures
17 or losses incurred by the employee in direct consequence of the discharge of his
18 or her duties, or of his or her obedience to the directions of the employer, even
though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful.

19 109. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
20 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
21 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
22 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR
23 SUB-CLASS members for expenses which included, but were not limited to, costs related to
24 using their personal vehicles on behalf of and for the benefit of DEFENDANT. Specifically,
25 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were required by
26 DEFENDANT to use their personal vehicles in order to perform work related job tasks.
27 DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and the CALIFORNIA
28

LABOR SUB-CLASS members for expenses resulting from using their personal vehicles for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

112. Cal. Lab. Code § 200 provides that:

As used in this article:

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

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

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

1 immediately.”

2 114. Cal. Lab. Code § 202 provides, in relevant part, that:

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

12 115. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR
13 SUB-CLASS Members’ employment contract.

14 116. Cal. Lab. Code § 203 provides:

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

20 117. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
21 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,
22 to these employees who actually worked overtime, as required by law.

23 118. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
24 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFFS
25 demand up to thirty days of pay as penalty for not paying all wages due at time of termination
26 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
27 PERIOD, and demand an accounting and payment of all wages due, plus interest and statutory
28 costs as allowed by law.

23 **NINTH CAUSE OF ACTION**

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

25 **(By Plaintiff Zambrano Against All Defendants)**

26 113. Plaintiff Zambrano realleges and incorporate by this reference, as though fully
27 set forth herein, the prior paragraphs of this Complaint.

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

115. Within the State of California there exists a substantial and fundamental public 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 termination. Unlawful harassment includes the right to be free from unwanted, offensive racial harassment, and the right to protest such conduct without fear of retaliation or further harm. This public policy of the state is one that benefits the public at large and guarantees the rights of an employee to perform their work free from racial harassment/discrimination/retaliation.

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

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

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

TENTH CAUSE OF ACTION
For Violation of Government Code §12940(a) - Age Discrimination
(By Plaintiff Zambrano Against All Defendants)

1 119. Plaintiff Zambrano realleges and incorporate by this reference, as though fully
2 set forth herein, the prior paragraphs of this Complaint.

3 120. Plaintiff Zambrano was employed by DEFENDANT.

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

5 122. Plaintiff Zambrano was terminated from her employment and/or suffered other
6 adverse employment actions.

7 123. Prior to her termination in November of 2020, Plaintiff Zambrano reported to
8 DEFENDANT that Dina Garcia was treating her in a disrespectful manner about her age
9 while encouraging her to find employment elsewhere. Additionally, Plaintiff Zambrano
10 spoke to DEFENDANT about her inadequate and often interrupted breaks periods and
11 DEFENDANT's lack of a break room. Plaintiff Zambrano was terminated shortly after
12 making these complaints. Plaintiff Zambrano's age as a 53 year-old female was a
13 substantial motivating reason(s) for her termination and other adverse employment actions,
14 including termination of her employment.

15 124. As a result of DEFENDANT's conduct, Plaintiff Zambrano has suffered
16 substantial losses in earnings and employment benefits and emotional distress in an amount
17 to be determined according to proof at trial.

18 125. In doing the acts herein alleged, DEFENDANT acted with malice and
19 oppression, and with a conscious disregard of Plaintiff Zambrano's rights, Plaintiff
20 Zambrano is entitled to exemplary and punitive damages from DEFENDANT in an amount
21 to be punish DEFENDANT and to deter such wrongful conduct in the future.
22

23 **ELEVENTH CAUSE OF ACTION**

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

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

26 **(By Plaintiff Zambrano and Against All Defendants)**
27

126. Plaintiff Zambrano incorporates by reference the allegations set forth in the prior paragraphs as though fully set forth at this point.

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

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

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

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

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

- 1 A) That the Court certify the First Cause of Action asserted by the
2 CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
3 Proc. § 382;
4
5 B) An order temporarily, preliminarily and permanently enjoining and
6 restraining DEFENDANT from engaging in similar unlawful conduct
7 as set forth herein;
8
9 C) An order requiring DEFENDANT to pay all wages and all sums
10 unlawfully withheld from compensation due to PLAINTIFF and the
11 other members of the CALIFORNIA CLASS; and,
12
13 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a
14 fluid fund for restitution of the sums incidental to DEFENDANT's
15 violations due to PLAINTIFF and to the other members of the
16 CALIFORNIA CLASS.

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

- 18 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh
19 and Eighth Causes of Action asserted by the CALIFORNIA LABOR
20 SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. §
21 382;
22
23 B) Compensatory damages, according to proof at trial, including
24 compensatory damages for overtime compensation due PLAINTIFF
25 and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
27 plus interest thereon at the statutory rate;
28
C) Meal and rest period compensation pursuant to California Labor Code
Section 226.7 and the applicable IWC Wage Order;

- 1 D) The greater of all actual damages or fifty dollars (\$50) for the initial
2 pay period in which a violation occurs and one hundred dollars (\$100)
3 per each member of the CALIFORNIA LABOR SUB-CLASS for each
4 violation in a subsequent pay period, not exceeding an aggregate
5 penalty of four thousand dollars (\$4,000), and an award of costs for
6 violation of Cal. Lab. Code § 226;
7
8 E) The amount of the expenses PLAINTIFF and each member of the
9 CALIFORNIA LABOR SUBCLASS incurred in the course of their job
10 duties, plus interest, and costs of suit;
11
12 F) For liquidated damages pursuant to California Labor Code Sections
13 1194.2 and 1197;
14
15 G) The wages of all terminated employees from the CALIFORNIA
16 LABOR SUB-CLASS as a penalty from the due date thereof at the
17 same rate until paid or until an action therefore is commenced, in
18 accordance with Cal. Lab. Code § 203;

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

- 20 A) For all special damages which were sustained as a result of
21 DEFENDANT's conduct, including, but not limited to, back pay, front
22 pay, lost compensation and job benefits that Plaintiff Zambrano would
23 have received but for the retaliatory practices of DEFENDANT; and,
24 B) For all exemplary damages, according to proof, which were sustained
25 as a result of DEFENDANT's conduct.

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

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

1 5. On all claims:

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

8 Dated: April 14, 2022

 BLUMENTHAL NORDREHAUG BHOWMIK
 DE BLOUW LLP

10
11 By: 

12 Norman B. Blumenthal

13 Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: April 14, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiffs