

04/08/2024

Chad Finke, Executive Officer / Clerk of the Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

JASON TAAD an individual, on behalf of himself
and on behalf of all persons similarly situated,

Plaintiff,

vs.

BIGGE CRANE AND RIGGING CO., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. RG21103112

[Consolidated with Case No. RG21103123]

**FIRST AMENDED CONSOLIDATED CLASS
AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510;
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; and
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202, 203; and
9. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et. seq.* FOR VIOLATIONS OF LABOR CODE §§ 201-202, 203, 204 *et. seq.*, 210, 221, 226(a), 226.7, 2333, 246, 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).

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant Bigge Crane and Rigging Co. (“DEFENDANT”) is a California corporation
8 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
9 the state of California.

10 2. DEFENDANT offers bare lease, crane sales, crane and rigging services, transportation,
11 pre-planning, project management, and engineering services to its customers.

12 3. PLAINTIFF was employed by DEFENDANT in California from August of 2015 through
13 February 13, 2024 and was at all times classified by DEFENDANT as a non-exempt employee, paid
14 on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
15 and overtime wages due for all time worked.

16 4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined
17 as all individuals who are or previously were employed by DEFENDANT as non-exempt and a
18 Teamsters member or a non0union employee in the State of California(the “CALIFORNIA CLASS”)
19 between June 29, 2017 and April 25, 2024, or the date of preliminary approval, whichever occurs first
20 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
21 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS
23 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
24 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to
25 lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was an
26 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to
27 retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and
28 the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by

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

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

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

19 20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
23 the time during which an employee is subject to the control of an employer, including all the time the
24 employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA
25 CLASS Members to work without paying them for all the time they are under DEFENDANT's control.
26 Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is
27 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by
28 work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. As a result,

1 PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage
2 compensation, and off-duty meal breaks by working without their time being correctly recorded and
3 without compensation at the applicable rates. Also, DEFENDANT, as a matter of established company
4 policy and procedure, administered a uniform practice of rounding the actual time worked and recorded
5 by PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that
6 during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members were paid
7 less than they would have been paid had they been paid for actual recorded time rather than “rounded”
8 time. DEFENDANT’s policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
9 Members for all time worked, is evidenced by DEFENDANT’s business records.

10 9. State and federal law provides that employees must be paid overtime at one-and-one-half
11 times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members are
12 compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee’s
13 performance.

14 10. The second component of PLAINTIFF’s and other CALIFORNIA CLASS Members’
15 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF and other
16 CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT. The
17 non-discretionary incentive program provided all employees paid on an hourly basis with incentive
18 compensation when the employees met the various performance goals set by DEFENDANT. However,
19 when calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other
20 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation as part
21 of the employees’ “regular rate of pay” for purposes of calculating overtime pay. Management and
22 supervisors described the incentive program to potential and new employees as part of the compensation
23 package. As a matter of law, the incentive compensation received by PLAINTIFF and other
24 CALIFORNIA CLASS Members must be included in the “regular rate of pay.” The failure to do so has
25 resulted in a underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS
26 Members by DEFENDANT.

27 11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
28 CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and are

1 not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
2 Members are required from time to time to perform work as ordered by DEFENDANT for more than
3 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time
4 to time fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal
5 period for some workdays in which these employees are required by DEFENDANT to work ten (10)
6 hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal
7 breaks without additional compensation and in accordance with DEFENDANT's corporate policy and
8 practice.

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

28 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately record

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

15 14. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
16 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
17 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
18 every employer shall furnish each of his or her employees with an accurate itemized wage statement in
19 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during
20 the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and
21 CALIFORNIA CLASS Members are paid on an hourly basis. As such, the wage statements should
22 reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable
23 pay period in which the wages are earned pursuant to California Labor Code Section 226(a). The wage
24 statements DEFENDANT provides to PLAINTIFF and other CALIFORNIA CLASS Members fail to
25 identify such information. More specifically, the wage statements fail to identify the accurate total hours
26 worked each pay period. When the hours shown on the wage statements are added up, they do not equal
27 the actual total hours worked during the pay period. Aside, from the violations listed above in this
28 paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists all the

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

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

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

14 16. DEFENDANT from time to time fails to pay PLAINTIFF and members of the
15 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period
16 in accordance with Cal. Lab. Code § 204(d).

17 17. DEFENDANT underpays sick pay wages to PLAINTIFF and other CALIFORNIA
18 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF and
19 other non-exempt employees earn non-discretionary remuneration, including but not limited to,
20 incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
21 DEFENDANT underpays sick pay to PLAINTIFF and other CALIFORNIA CLASS Members at their
22 base rates of pay.

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

1 the employee, at the time of obeying the directions, believed them to be unlawful."

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

12 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other
13 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties
14 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based
15 thereon alleges that such failure to pay sick pay at regular rate was willful, such that PLAINTIFF and
16 members of the CALIFORNIA CLASS whose employment has separated are entitled to waiting time
17 penalties pursuant to Cal. Lab. Code Sections 201-203.

18 21. Specifically as to PLAINTIFF, DEFENDANT fails to provide all the legally required
19 off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor Code and
20 failed to pay him all minimum and overtime wages due to him. DEFENDANT does not have a policy
21 or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also fails to
22 compensate PLAINTIFF for his missed meal and rest breaks. The nature of the work performed by the
23 PLAINTIFF does not prevent him from being relieved of all of his duties for the legally required off-
24 duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required
25 meal periods is evidenced by DEFENDANT's business records. The amount in controversy for
26 PLAINTIFF individually does not exceed the sum or value of \$75,000.

27 **JURISDICTION AND VENUE**

28 22. This Court has jurisdiction over this Action pursuant to California Code of Civil

1 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action
2 is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
3 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

9 **THE CALIFORNIA CLASS**

10 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
12 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
13 are or previously were employed by DEFENDANT as non-exempt and a Teamsters member or a
14 nonUnion employee in the State of California (the "CALIFORNIA CLASS") between June 29, 2017
15 and April 25, 2024, or the date of preliminary approval, whichever occurs first (the "CALIFORNIA
16 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
17 Members is under five million dollars (\$5,000,000.00).

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

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

26 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
27 CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws.
28 The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the

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

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

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

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

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

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

1 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on
2 an hourly basis who was subjected to the DEFENDANT's deceptive practice
3 and policy which failed to provide the legally required meal and rest periods to
4 the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF
5 and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result
6 of DEFENDANT's employment practices. PLAINTIFF and the members of the
7 CALIFORNIA CLASS were and are similarly or identically harmed by the same
8 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

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

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

- 18 (a) Without class certification and determination of declaratory, injunctive, statutory
19 and other legal questions within the class format, prosecution of separate actions
20 by individual members of the CALIFORNIA CLASS will create the risk of:
- 21 1) Inconsistent or varying adjudications with respect to individual members
22 of the CALIFORNIA CLASS which would establish incompatible
23 standards of conduct for the parties opposing the CALIFORNIA
24 CLASS; and/or,
 - 25 2) Adjudication with respect to individual members of the CALIFORNIA
26 CLASS which would as a practical matter be dispositive of interests of
27 the other members not party to the adjudication or substantially impair
28 or impede their ability to protect their interests.

1 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on
2 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
3 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
4 DEFENDANT failed to pay all wages due to members of the CALIFORNIA
5 CLASS as required by law;

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

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

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

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

28 A. Inconsistent or varying adjudications with respect to individual

1 members of the CALIFORNIA CLASS, which would establish
2 incompatible standards of conduct for the DEFENDANT;
3 and/or,

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

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

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

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

22 (a) The questions of law and fact common to the CALIFORNIA CLASS
23 predominate over any question affecting only individual CALIFORNIA CLASS
24 Members because the DEFENDANT's employment practices are applied with
25 respect to the CALIFORNIA CLASS;

26 (b) A Class Action is superior to any other available method for the fair and
27 efficient adjudication of the claims of the members of the CALIFORNIA
28 CLASS because in the context of employment litigation a substantial number

1 of individual CALIFORNIA CLASS Members will avoid asserting their rights
2 individually out of fear of retaliation or adverse impact on their employment;

3 (c) The members of the CALIFORNIA CLASS are so numerous that it is
4 impractical to bring all members of the CALIFORNIA CLASS before the Court;

5 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able
6 to obtain effective and economic legal redress unless the action is maintained as
7 a Class Action;

8 (e) There is a community of interest in obtaining appropriate legal and equitable
9 relief for the acts of unfair competition, statutory violations and other
10 improprieties, and in obtaining adequate compensation for the damages and
11 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
12 CLASS;

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

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

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

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

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

1 identified.

2 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

28 38. Common questions of law and fact exist as to members of the CALIFORNIA LABOR

1 SUB-CLASS, including, but not limited, to the following:

- 2 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
3 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
4 missed meal and rest breaks in violation of the California Labor Code and
5 California regulations and the applicable California Wage Order;
- 6 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
8 wage statements;
- 9 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed
10 conduct;
- 11 (d) The proper measure of damages and penalties owed to the members of the
12 CALIFORNIA LABOR SUB-CLASS; and,
- 13 (e) Whether DEFENDANT's conduct was willful.

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

- 16 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
18 wages due for overtime worked, for which DEFENDANT is liable pursuant to
19 Cal. Lab. Code § 1194;
- 20 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
21 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
22 SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable
23 pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 24 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
26 statement in writing showing the corresponding correct amount of wages earned
27 by the employee;
- 28 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS with all
2 legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
3 legally required off-duty rest breaks;

4 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
5 employee is discharged or quits from employment, the employer must pay the
6 employee all wages due without abatement, by failing to tender full payment
7 and/or restitution of wages owed or in the manner required by California law to
8 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
9 their employment; and,

10 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
11 CALIFORNIA LABOR SUB-CLASS members with necessary expenses
12 incurred in the discharge of their job duties.

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

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

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

23 (c) The claims of the representative PLAINTIFF are typical of the claims of each
24 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
25 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
26 employee paid on an hourly basis who was subjected to the DEFENDANT's
27 practice and policy which failed to pay the correct amount of wages due to the
28 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury

1 as a result of DEFENDANT's employment practices. PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
3 identically harmed by the same unlawful, deceptive, and unfair misconduct
4 engaged in by DEFENDANT; and,

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

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

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

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

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

- 27 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
28 refused to act on grounds generally applicable to the CALIFORNIA LABOR

1 SUB-CLASS, making appropriate class-wide relief with respect to the
2 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to
3 pay all wages due. Including the correct wages for all time worked by the
4 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

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

- 1 3) In the context of wage litigation because a substantial number of
2 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
3 asserting their legal rights out of fear of retaliation by DEFENDANT,
4 which may adversely affect an individual's job with DEFENDANT or
5 with a subsequent employer, the Class Action is the only means to assert
6 their claims through a representative; and,
7 4) A class action is superior to other available methods for the fair and
8 efficient adjudication of this litigation because class treatment will
9 obviate the need for unduly and unnecessary duplicative litigation that
10 is likely to result in the absence of certification of this action pursuant
11 to Cal. Code of Civ. Proc. § 382.

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

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

- 1 (e) There is a community of interest in obtaining appropriate legal and equitable
2 relief for the acts of unfair competition, statutory violations and other
3 improprieties, and in obtaining adequate compensation for the damages and
4 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
5 LABOR SUB-CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of the
8 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
10 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
11 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 12 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
13 ascertainable from the business records of DEFENDANT. The CALIFORNIA
14 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who
15 worked for DEFENDANT in California at any time during the CALIFORNIA
16 LABOR SUB-CLASS PERIOD; and,
- 17 (i) Class treatment provides manageable judicial treatment calculated to bring a
18 efficient and rapid conclusion to all litigation of all wage and hour related claims
19 arising out of the conduct of DEFENDANT as to the members of the
20 CALIFORNIA LABOR SUB-CLASS.

21
22 **FIRST CAUSE OF ACTION**

23 **For Unlawful Business Practices**

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

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

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

28 21. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code §

1 17021.

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

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

13 Cal. Bus. & Prof. Code § 17203.

14 45. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in
15 a business practice which violates California law, including but not limited to, the applicable Industrial
16 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
17 203, 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802,
18 The Fair Labor Standards Act and federal regulations promulgated thereunder, for which this Court
19 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may
20 be necessary to prevent and remedy the conduct held to constitute unfair competition, including
21 restitution of wages wrongfully withheld.

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

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

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

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

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

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

25 52. By and through the unlawful and unfair business practices described herein,
26 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other
27 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived
28 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these

1 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
2 against competitors who comply with the law.

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **For Failure To Pay Overtime Compensation**

18 **[Cal. Lab. Code §§ 510]**

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

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

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

28 73. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and

1 public policy, an employer must timely pay its employees for all hours worked.

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

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

9 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT
11 to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

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

19 78. In committing these violations of the California Labor Code, DEFENDANT inaccurately
20 recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other
21 CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid
22 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
23 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

27 80. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
28 from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF

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

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

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

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

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

27 85. In performing the acts and practices herein alleged in violation of California labor laws,
28 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime

1 worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues
2 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or
4 the consequences to them, and with the despicable intent of depriving them of their property and legal
5 rights, and otherwise causing them injury in order to increase company profits at the expense of these
6 employees.

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

18 **FOURTH CAUSE OF ACTION**

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

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

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

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

25 88. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed
26 to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
27 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
28 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not

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

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

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

20 **FIFTH CAUSE OF ACTION**

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

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

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

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

27 92. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time
28 to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods.

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

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

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

17 **SIXTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code § 226]**

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

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

24 96. Cal. Labor Code § 226 provides that an employer must furnish employees with
25 an "accurate itemized" statement in writing showing:

- 26 (1) gross wages earned,
27 (2) total hours worked by the employee, except for any employee whose compensation is solely
28 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section

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

14 97. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
16 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
17 226 provides that every employer shall furnish each of his or her employees with an accurate itemized
18 wage statement in writing showing, among other things, gross wages earned and all applicable hourly
19 rates in effect during the pay period and the corresponding amount of time worked at each hourly rate.
20 PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members are paid on an hourly basis. As such,
21 the wage statements should reflect all applicable hourly rates during the pay period and the total hours
22 worked, and the applicable pay period in which the wages are earned pursuant to California Labor Code
23 Section 226(a). The wage statements DEFENDANT provides to PLAINTIFF and other CALIFORNIA
24 LABOR SUB-CLASS Members fail to identify such information. More specifically, the wage
25 statements fail to identify the accurate total hours worked each pay period. When the hours shown on
26 the wage statements are added up, they do not equal the actual total hours worked during the pay period.
27 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
28

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

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

15 **SEVENTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 2802]**

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

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

21
22 100. Cal. Lab. Code § 2802 provides, in relevant part, that:

23 An employer shall indemnify his or her employee for all necessary expenditures or
24 losses incurred by the employee in direct consequence of the discharge of his or her
25 duties, or of his or her obedience to the directions of the employer, even though
26 unlawful, unless the employee, at the time of obeying the directions, believed them to
27 be unlawful.
28

101. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones 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 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

102. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by himself 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 and 203]

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

103. PLAINTIFF, 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.

1 104. Cal. Lab. Code § 200 provides, in relevant part, that:

2 As used in this article:

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

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

9
10 105. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an
11 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

12 106. Cal. Lab. Code § 202 provides, in relevant part, that:

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

22
23 107. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
24 CLASS Members' employment contract.

25 108. Cal. Lab. Code § 203 provides, in relevant part, that:

26 If an employer willfully fails to pay, without abatement or reduction, in accordance
27 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
28

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

4
5 109. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
6 Members has terminated and DEFENDANT has not tendered payment of all wages owed as required
7 by law.

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

14 **NINTH CAUSE OF ACTION**

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

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

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

18 111. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
19 the prior paragraphs of this Complaint.

20 112. PAGA is a mechanism by which the State of California itself can enforce state labor
21 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
22 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
23 enforcement action designed to protect the public and not to benefit private parties. The purpose of
24 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
25 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
26 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
27 general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly,
28

1 PAGA claims cannot be subject to arbitration.

2 113. PLAINTIFF, and such persons that may be added from time to time who satisfy the
3 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
4 this Representative Action on behalf of the State of California with respect to himself and all
5 individuals who are or previously were employed by DEFENDANT who were classified as non-exempt
6 and a Teamsters member or a non-union employee in the State of California ("AGGRIEVED
7 EMPLOYEES") between February 19, 2020 and April 25, 2024, or the date of preliminary approval,
8 whichever occurs first (the "PAGA PERIOD").

9 114. On February 19, 2021, PLAINTIFF gave written notice by electronic mail to the Labor
10 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
11 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The
12 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a
13 result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
14 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
15 EMPLOYEES as herein defined.

16 115. The policies, acts and practices heretofore described were and are an unlawful business
17 act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other AGGRIEVED
18 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
19 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
20 sick pay wages, and (e) failed to reimburse employees for required expenses, all in violation of the
21 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a),
22 226.7, 233, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
23 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and
24 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of
25 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
26

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

1 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
2 AGGRIEVED EMPLOYEES.

3 116. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To
4 the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the
5 PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected the AGGRIEVED
6 EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
9 as follows:

10 1. On behalf of the CALIFORNIA CLASS:

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

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

- 22 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
23 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
24 pursuant to Cal. Code of Civ. Proc. § 382;
25 B) Compensatory damages, according to proof at trial, including compensatory damages
26 for minimum and overtime compensation due PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR
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- 1 SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 2 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
- 3 a violation occurs and one hundred dollars (\$100) per each member of the
- 4 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not
- 5 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs
- 6 for violation of Cal. Lab. Code § 226;
- 7 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
- 8 applicable IWC Wage Order;
- 9 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- 10 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 11 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs
- 12 of suit; and
- 13 (G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as
- 14 a penalty from the due date thereof at the same rate until paid or until an action therefore
- 15 is commenced, in accordance with Cal. Lab. Code § 203.
- 16 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 17 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
- 18 Act of 2004; and,
- 19 B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but
- 20 not limited to, pursuant to Labor Code §2699.
- 21 4. On all claims:
- 22 A) An award of interest, including prejudgment interest at the legal rate;
- 23 B) Such other and further relief as the Court deems just and equitable; and,
- 24 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
- 25 including, but not limited to, pursuant to Labor Code §226, §1194, and/or §2802.
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Dated: April 08, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: April 08, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: s/ Nicholas J. De Blouw

Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff