

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 Plaintiff

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/20/2021 at 07:03:33 PM

Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JACQUELINE HERNANDEZ, an individual,
on behalf of herself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

CENTRO DE SALUD DE LA
COMUNIDAD DE SAN YSIDRO, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2021-00017389-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Centro De Salud De La Comunidad De San Ysidro, Inc.
7 (“DEFENDANT”) is a California Corporation that at all relevant times mentioned herein
8 conducted and continues to conduct substantial business in the state of California.

9 2. DEFENDANT is an organization that provides health care services in San Diego
10 County.

11 3. PLAINTIFF was employed by DEFENDANT in California from January of 2020
12 to February of 2021 and was at all times classified by DEFENDANT as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
27 and CALIFORNIA CLASS Members to work without paying them for all the time they were
28 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work

1 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
2 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
3 should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and
4 CALIFORNIA CLASS Members would clock out of DEFENDANT's timekeeping system, in
5 order to perform additional work for DEFENDANT as required to meet DEFENDANT's job
6 requirements. Also, DEFENDANT, as a matter of established company policy and procedure,
7 administered a uniform practice of rounding the actual time worked and recorded by
8 PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so
9 that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members
10 were paid less than they would have been paid had they been paid for actual recorded time
11 rather than "rounded" time. DEFENDANT's policy and practice not to pay PLAINTIFF and
12 other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
13 business records. As a result, DEFENDANT failed to pay PLAINTIFF and other
14 CALIFORNIA CLASS Members the proper minimum and overtime wages.

15 9. In addition, State and federal law provides that employees must be paid overtime
16 at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA
17 CLASS Members were compensated at an hourly rate plus incentive pay that is tied to specific
18 elements of an employee's performance.

19 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
20 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
21 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
22 performance for DEFENDANT. The non-discretionary incentive program provided all
23 employees paid on an hourly basis with incentive compensation when the employees met the
24 various performance goals set by DEFENDANT. However, when calculating the regular rate
25 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
26 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
27 rate of pay" for purposes of calculating overtime pay. As a matter of law, the incentive
28 compensation received by PLAINTIFF and other CALIFORNIA CLASS Members must be

1 included in the “regular rate of pay.” The failure to do so has resulted in an underpayment of
2 overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by
3 DEFENDANT.

4 11. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
5 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically,
6 PLAINTIFF and other non-exempt employees regularly earn non-discretionary remuneration.
7 Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
8 PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

9 12. As a result of their rigorous work schedules, PLAINTIFF and other
10 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
11 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
12 other CALIFORNIA CLASS Members were required from time to time to perform work as
13 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
14 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
15 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
16 which these employees were required by DEFENDANT to work ten (10) hours of work.
17 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
18 without additional compensation and in accordance with DEFENDANT’s corporate policy and
19 practice.

20 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
21 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
22 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
23 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
24 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
25 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
26 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
27 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
28 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage

1 Order requires employers to provide employees with off-duty rest periods, which the California
2 Supreme Court defined as time during which an employee is relieved from all work related
3 duties and free from employer control. In so doing, the Court held that the requirement under
4 California law that employers authorize and permit all employees to take rest period means that
5 employers must relieve employees of all duties and relinquish control over how employees
6 spend their time which includes control over the locations where employees may take their rest
7 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
8 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
9 other CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
10 Defendant's rule which stated PLAINTIFF and other CALIFORNIA CLASS Members could
11 not leave the work premises during their rest period. As a result of being on the premises for
12 her rest period, PLAINTIFF from time to time performed work tasks in the hospital for
13 DEFENDANT due to her being present at the facility.

14 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
15 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
16 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
17 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
18 all time worked, meaning the time during which an employee was subject to the control of an
19 employer, including all the time the employee was permitted or suffered to permit this work.
20 DEFENDANT required these employees to work off the clock without paying them for all the
21 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
22 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
23 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
24 Members forfeited time worked by working without their time being accurately recorded and
25 without compensation at the applicable minimum wage and overtime wage rates. To the extent
26 that the time worked off the clock did not qualify for overtime premium payment,
27 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
28 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

21 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
22 other members of the CALIFORNIA CLASS with complete and accurate wage statements
23 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
24 Code § 226 provides that every employer shall furnish each of his or her employees with an
25 accurate itemized wage statement in writing showing, among other things, gross wages
26 earned and all applicable hourly rates in effect during the pay period and the corresponding
27 amount of time worked at each hourly rate. Aside, from the violations listed above in this
28 paragraph, DEFENDANT failed 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
2 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
3 statements which violated Cal. Lab. Code § 226.

4 18. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
6 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
7 CALIFORNIA CLASS for missed meal and rest periods. This policy and practice of
8 DEFENDANT is intended to purposefully avoid the payment for all time worked as required
9 by California law which allows DEFENDANT to illegally profit and gain an unfair
10 advantage over competitors who complied with the law. To the extent equitable tolling
11 operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the
12 CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

24 20. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
25 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
26 Labor Code and failed to pay her all minimum and overtime wages due to her.
27 DEFENDANT did not have a policy or practice which provided timely off-duty meal and
28 rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal

1 and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent her
2 from being relieved of all of his duties for the legally required off-duty meal periods. As a
3 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal
4 periods is evidenced by DEFENDANT's business records. To date, DEFENDANTS has not
5 fully paid PLAINTIFF the minimum and overtime compensation still owed to her or any
6 penalties owed to her under Cal. Lab. Code § 203. The amount in controversy for
7 PLAINTIFF individually does not exceed the sum or value of \$75,000.

8 9 **JURISDICTION AND VENUE**

10 21. This Court has jurisdiction over this Action pursuant to California Code of
11 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
12 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
13 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

20 21 **THE CALIFORNIA CLASS**

22 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
23 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
24 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
25 California class, defined as all individuals who are or previously were employed by
26 DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA
27 CLASS") at any time during the period beginning four (4) years prior to the filing of this
28 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS

1 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
2 Members is under five million dollars (\$5,000,000.00).

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

6 25. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
7 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
8 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
9 failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA
10 CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required
11 employees to perform this work and permits or suffers to permit this work.

12 26. DEFENDANT has the legal burden to establish that each and every
13 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
14 required by California laws. The DEFENDANT, however, as a matter of policy and
15 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
16 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
17 Member is paid as required by law. This common business practice is applicable to each
18 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
19 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
20 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

21 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
22 CLASS Members is impracticable.

23 28. DEFENDANT violated the rights of the CALIFORNIA CLASS under
24 California law by:

- 25 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
26 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
27 and/or deceptively having in place company policies, practices and
28 procedures that failed to record and pay PLAINTIFF and the other

1 members of the CALIFORNIA CLASS for all time worked, including
2 minimum wages owed and overtime wages owed for work performed
3 by these employees;

4 (b) Committing an act of unfair competition in violation of the UCL, by
5 failing to provide the PLAINTIFF and the other members of the
6 CALIFORNIA CLASS with the legally required meal and rest periods;
7 and,

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

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

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

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

22 (c) The claims of the representative PLAINTIFF are typical of the claims
23 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
24 the other members of the CALIFORNIA CLASS, was classified as a
25 non-exempt employee paid on an hourly basis who was subjected to the
26 DEFENDANT's deceptive practice and policy which failed to provide
27 the legally required meal and rest periods to the CALIFORNIA CLASS
28 and thereby underpaid compensation to PLAINTIFF and

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

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

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

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

- 20 1) Inconsistent or varying adjudications with respect to individual
21 members of the CALIFORNIA CLASS which would establish
22 incompatible standards of conduct for the parties opposing the
23 CALIFORNIA CLASS; and/or,
24 2) Adjudication with respect to individual members of the
25 CALIFORNIA CLASS which would as a practical matter be
26 dispositive of interests of the other members not party to the
27 adjudication or substantially impair or impede their ability to
28 protect their interests.

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

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

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

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

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

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

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

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

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

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

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

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

1 hour related claims arising out of the conduct of DEFENDANT as to
2 the members of the CALIFORNIA CLASS.

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

8
9 **THE CALIFORNIA LABOR SUB-CLASS**

10 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh
11 and Eighth Causes of Action on behalf of a California sub-class, defined as all members of
12 the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
13 California and classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
14 CLASS") at any time during the period beginning three (3) years prior to the filing of this
15 Complaint and ending on the date as determined by the Court(the "CALIFORNIA LABOR
16 SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
17 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
18 under five million dollars (\$5,000,000.00).

19 34. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
20 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
21 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
22 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
24 these employees, even though DEFENDANT enjoyed the benefit of this work, required
25 employees to perform this work and permitted or suffered to permit this work.
26 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
27 which these employees are entitled in order to unfairly cheat the competition and unlawfully
28 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR

1 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
2 should be adjusted accordingly.

3 35. DEFENDANT maintains records from which the Court can ascertain and
4 identify by name and job title, each of DEFENDANT's employees who have been
5 intentionally subjected to DEFENDANT's company policy, practices and procedures as
6 herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
7 additional job titles of similarly situated employees when they have been identified.

8 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 12 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
13 compensation due to members of the CALIFORNIA LABOR SUB-
14 CLASS for missed meal and rest breaks in violation of the California
15 Labor Code and California regulations and the applicable California
16 Wage Order;
- 17 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS with accurate
19 itemized wage statements;
- 20 (c) Whether DEFENDANT has engaged in unfair competition by the
21 above-listed conduct;
- 22 (d) The proper measure of damages and penalties owed to the members of
23 the CALIFORNIA LABOR SUB-CLASS; and,
- 24 (e) Whether DEFENDANT's conduct was willful.

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

- 27 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
28 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-

1 CLASS all wages due for overtime worked, for which DEFENDANT is
2 liable pursuant to Cal. Lab. Code § 1194;

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

7 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
8 the members of the CALIFORNIA LABOR SUB-CLASS with an
9 accurate itemized statement in writing showing the corresponding
10 correct amount of wages earned by the employee;

11 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
12 PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS with all legally required off-duty, uninterrupted thirty
14 (30) minute meal breaks and the legally required off-duty rest breaks;
15 and,

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

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

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

28 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS

are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

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

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

PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA 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.

40. In addition to meeting the statutory prerequisites to a Class Action, this action

1 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

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

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

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

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

- 1) The interests of the members of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class

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

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

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

1 DEFENDANT are sufficient to adequately compensate the members of
2 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

7 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The
9 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
10 CLASS Members who worked for DEFENDANT in California at any
11 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

16
17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

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

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

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

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

27 44. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
28 defines

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
2 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
3 competition as follows:

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

12 Cal. Bus. & Prof. Code § 17203.

13 45. By the conduct alleged herein, DEFENDANT has engaged and continues to
14 engage in a business practice which violates California law, including but not limited to, the
15 applicable Industrial Wage Order(s), the California Code of Regulations and the California
16 Labor Code including Sections 204, 210, 226.7, 233, 246, 510, 512, 1194, 1197, 1197.1,
17 1198 & 2802, The Fair Labor Standards Act and federal regulations promulgated
18 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
19 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
20 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

27 47. By the conduct alleged herein, DEFENDANT's practices were deceptive and
28 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
members of the CALIFORNIA CLASS, Fair Labor Standards Act wages due for overtime
worked as a result of failing to include incentive compensation into their regular rates for
purposes of computing overtime pay, failed to provide the legally mandated meal and rest

1 periods, the required amount of compensation for missed meal and rest periods and overtime
2 and minimum wages owed, failed to timely pay wages, and failed to reimburse al necessary
3 business expenses incurred, due to a business practice that cannot be justified, pursuant to
4 the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation
5 of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and
6 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
7 wrongfully withheld.

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

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

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

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

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

1 allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

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

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

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

6
7
8
9
20
21
22
23
24
25
26
27
28

9
10
11
12
13
14
15
16
17
18

22
23
24
25
26
27
2827
28

1 implementing a policy and practice that denies accurate compensation to PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
3 wage pay.

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

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

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

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

26 68. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
28 time worked. DEFENDANT elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
2 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
3 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
4 wages for their time worked.

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

13 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
15 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
16 in a sum as provided by the California Labor Code and/or other applicable statutes.
17 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith.
18 Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled
19 to seek and recover statutory costs.

20
21 **THIRD CAUSE OF ACTION**

22 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

1 workweek.

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

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

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

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

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

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

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

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

22 86. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
23 CLASS therefore request recovery of all unpaid wages, including overtime wages,
24 according to proof, interest, statutory costs, as well as the assessment of any statutory
25 penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or
26 other applicable statutes. To the extent overtime compensation is determined to be owed to
27 the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
28 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these

1 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
2 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
3 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in
4 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
5 are entitled to seek and recover statutory costs.

6
7 **FOURTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

15 88. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
16 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
17 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
18 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
19 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
20 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
21 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
22 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
23 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
24 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
25 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
26 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
27 second off-duty meal period in some workdays in which these employees were required by
28 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF

1 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
2 breaks without additional compensation and in accordance with DEFENDANT's corporate
3 policy and practice.

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

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

13
14 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 2802]**

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

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

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

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

26 97. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
27 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
28

1 CLASS members for required expenses incurred in the discharge of their job duties for
2 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
3 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
4 limited to, costs related to using their personal cellular phones all on behalf of and for the
5 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS
6 Members were required by DEFENDANT to use their personal cell phones to respond to
7 work related issues. DEFENDANT's policy, practice and procedure was to not reimburse
8 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting
9 from using their personal cellular phones for DEFENDANT within the course and scope of
10 their employment for DEFENDANT. These expenses were necessary to complete their
11 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
12 waiver of this expectation. Although these expenses were necessary expenses incurred by
13 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed
14 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
15 members for these expenses as an employer is required to do under the laws and regulations
16 of California.

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

21 **SEVENTH CAUSE OF ACTION**

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

23 **[Cal. Lab. Code § 226]**

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

26 99. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
28

1 paragraphs of this Complaint.

2 100. Cal. Labor Code § 226 provides that an employer must furnish employees with
3 an “accurate itemized” statement in writing showing:

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

22 101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
24 wage statements which failed to show, among other things, the correct gross and net wages
25 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
26 employees with an accurate itemized wage statement in writing showing, among other
27 things, gross wages earned and all applicable hourly rates in effect during the pay period and
28 the corresponding amount of time worked at each hourly rate. Aside, from the violations
listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized
wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
§ 226.

102. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
Code § 226, causing injury and damages to PLAINTIFF and the other members of the
CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs

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

10
11 **EIGHTH CAUSE OF ACTION**

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

13 **[Cal. Lab. Code §§ 201, 202, 203, 204, 233, 246]**

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

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

19 104. Cal. Lab. Code § 200 states that:

20 As used in this article:

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

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

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

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

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

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

9 108. Cal. Lab. Code § 203 states:

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

13 109. When PLAINTIFF left employment with DEFENDANT, DEFENDANT
14 still owed PLAINTIFF wages for work performed because PLAINTIFF was not
15 compensated correctly for her time worked and meal and rest breaks missed and also
16 was not paid sick pay wages at PLAINTIFF's correct regular rate. To date,
17 DEFENDANT has not paid PLAINTIFF these wages still owed to her. As such,
18 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty
19 wages that are now owed to her under California Labor Code § 203.

20 110. The employment of PLAINTIFF and many other CALIFORNIA LABOR
21 SUB-CLASS Members has terminated, yet as to those individuals whose employment
22 terminated, DEFENDANTS did not timely tender payment of all wages owed as required by
23 law.

24 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
25 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,
26 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
27 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated
28 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and

1 statutory costs as allowed.

2 **NINTH CAUSE OF ACTION**

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

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

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

6 112. PLAINTIFF realleges and incorporates by reference, as though fully set forth
7 herein, the prior paragraphs of this Complaint.

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

18 114. PLAINTIFF, and such persons that may be added from time to time who
19 satisfy the requirements and exhaust the administrative procedures under the Private
20 Attorney General Act, brings this Representative Action on behalf of the State of California
21 with respect to herself and all individuals who are or previously were employed by
22 DEFENDANT in California and classified as non-exempt employees (the "AGGRIEVED
23 EMPLOYEES") during the time period of February 12, 2020 until a date as determined by
24 the Court (the "PAGA PERIOD").

25 115. On February 12, 2021, PLAINTIFF gave written notice by electronic mail to
26 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
28 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations

1 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
2 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
3 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 116. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
6 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
7 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
8 wages, (d) failed to pay minimum wages, (e) failed to provide wages when due, and (f)
9 failed to reimburse employees for required expenses, all in violation of the applicable Labor
10 Code sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
11 226.7, 233, 246 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
12 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable
13 Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such
14 conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
15 Code Private Attorney General Act of 2004 as the representative of the State of California
16 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES.

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

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
26

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

severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

- 1 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
2 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
3 costs of suit;
- 4 F) The wages of all terminated individuals in the CALIFORNIA LABOR
5 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
6 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
7 and,
- 8 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
9 1197.
- 10 3. On behalf of the State of California and with respect to all AGGRIEVED
11 EMPLOYEES:
- 12 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
13 General Act of 2004.
- 14 4. On all claims:
- 15 A) An award of interest, including prejudgment interest at the legal rate;
16 B) Such other and further relief as the Court deems just and equitable; and,
17 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
18 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
19 §2802.

20 Dated: April 20, 2021

21 BLUMENTHAL NORDREHAUG BHOWMIK
22 DE BLOUW LLP

23
24 By: /s/ Norman Blumenthal
25 Norman B. Blumenthal
26 Attorneys for Plaintiff
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

Dated: April 20, 2021 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff