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

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

14 RAYMOND HUERTA, an individual, on
15 behalf of himself and on behalf of all persons
16 similarly situated,

17 Plaintiff,

18 vs.

19 SPLAY, INC., a California Corporation; and
20 DOES 1 through 50, inclusive,

21 Defendants.

Case No. _____

RG21102661

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;
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

ENDORSED
FILED
ALAMEDA COUNTY

JUN 23 2021

CLERK OF THE SUPERIOR COURT

By _____

Deputy

Filed By Fax

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT is a provider of offshore plastic injection molding services. It
10 offers domestic injection molding, tooling, pad printing and decorating, and on-site assembly
11 services.

12 3. PLAINTIFF was employed by DEFENDANT in California from September of
13 2018 to April 24, 2020 and was at all times classified by DEFENDANT as a non-exempt
14 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
15 payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

23 **THE CONDUCT**

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

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

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

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

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

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

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

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

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

15 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
16 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
17 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
19 all time worked, meaning the time during which an employee was subject to the control of an
20 employer, including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT required these employees to work off the clock without paying them for all the
22 time they were under DEFENDANT's control, including, but not limited to, time spent
23 undergoing mandatory drug testing or any other testing and/or examination required as a
24 condition of employment. As such, DEFENDANT knew or should have known that
25 PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for
26 all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
27 time worked by working without their time being accurately recorded and without compensation
28 at the applicable minimum wage and overtime wage rates. To the extent that the time worked

1 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
2 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
3 1197, and 1197.1.

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

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

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

1 amount of time worked at each hourly rate. Specifically, DEFENDANT violated Cal. Lab.
2 Code Section 226(a)(8) by failing to list the correct name of the legal entity that employed
3 PLAINTIFF and other CALIFORNIA CLASS Members. Aside, from the violations listed
4 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
5 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
6 DEFENDANT from time to time provided PLAINTIFF and the other members of the
7 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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

28 20. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally

1 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
2 Labor Code and failed to pay him all minimum and overtime wages due to him.
3 DEFENDANT did not have a policy or practice which provided timely off-duty meal and
4 rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal
5 and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him
6 from being relieved of all of his duties for the legally required off-duty meal periods. As a
7 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal
8 periods is evidenced by DEFENDANT's business records. To date, DEFENDANT has not
9 fully paid PLAINTIFF the minimum and overtime compensation still owed to him or any
10 penalties owed to him under Cal. Lab. Code § 203. The amount in controversy for
11 PLAINTIFF individually does not exceed the sum or value of \$75,000.

12 13 **JURISDICTION AND VENUE**

14 21. This Court has jurisdiction over this Action pursuant to California Code of
15 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
16 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
17 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

24 25 **THE CALIFORNIA CLASS**

26 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
27 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
28 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a

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

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

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

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

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

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

- 1 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
2 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
3 and/or deceptively having in place company policies, practices and
4 procedures that failed to record and pay PLAINTIFF and the other
5 members of the CALIFORNIA CLASS for all time worked, including
6 minimum wages owed and overtime wages owed for work performed
7 by these employees;
- 8 (b) Committing an act of unfair competition in violation of the UCL, by
9 failing to provide the PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with the legally required meal and rest periods;
11 and,
- 12 (c) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
14 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
15 and the CALIFORNIA CLASS members with necessary expenses
16 incurred in the discharge of their job duties.

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

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

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

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

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

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

- 24 1) Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA CLASS which would establish
26 incompatible standards of conduct for the parties opposing the
27 CALIFORNIA CLASS; and/or,
28 2) Adjudication with respect to individual members of the

CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

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

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

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

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

Members when compared to the substantial expense and burden of individual prosecution of this litigation;

- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- 1 (h) The members of the CALIFORNIA CLASS are readily ascertainable
2 from the business records of DEFENDANT; and,
- 3 (i) Class treatment provides manageable judicial treatment calculated to
4 bring a efficient and rapid conclusion to all litigation of all wage and
5 hour related claims arising out of the conduct of DEFENDANT as to
6 the members of the CALIFORNIA CLASS.

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

12
13 **THE CALIFORNIA LABOR SUB-CLASS**

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

23 34. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
24 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
25 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
26 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
28 these employees, even though DEFENDANT enjoyed the benefit of this work, required

1 employees to perform this work and permitted or suffered to permit this work.

2 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
3 which these employees are entitled in order to unfairly cheat the competition and unlawfully
4 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
5 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
6 should be adjusted accordingly.

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

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

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

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

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

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

1 employment.

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

- 4 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
5 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
6 CLASS Members is impracticable and the disposition of their claims as
7 a class will benefit the parties and the Court;
- 8 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
9 issues that are raised in this Complaint are common to the
10 CALIFORNIA LABOR SUB-CLASS and will apply to every member
11 of the CALIFORNIA LABOR SUB-CLASS;
- 12 (c) The claims of the representative PLAINTIFF are typical of the claims
13 of each member of the CALIFORNIA LABOR SUB-CLASS.
14 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
15 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
16 was subjected to the DEFENDANT's practice and policy which failed
17 to pay the correct amount of wages due to the CALIFORNIA LABOR
18 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
19 DEFENDANT's employment practices. PLAINTIFF and the members
20 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
21 identically harmed by the same unlawful, deceptive, and unfair
22 misconduct engaged in by DEFENDANT; and,
- 23 (d) The representative PLAINTIFF will fairly and adequately represent and
24 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
25 has retained counsel who are competent and experienced in Class
26 Action litigation. There are no material conflicts between the claims of
27 the representative PLAINTIFF and the members of the CALIFORNIA
28 LABOR SUB-CLASS that would make class certification

1 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
2 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
3 CLASS Members.

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

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

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

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

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

26 (c) Common questions of law and fact predominate as to the members of
27 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
28 and violations of California Law as listed above, and predominate over

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

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

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

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

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

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

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

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

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

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

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

21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

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

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

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

1 Code § 17021.

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

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

14 Cal. Bus. & Prof. Code § 17203.

15 45. By the conduct alleged herein, DEFENDANT has engaged and continues to
16 engage in a business practice which violates California law, including but not limited to, the
17 applicable Industrial Wage Order(s), the California Code of Regulations and the California
18 Labor Code including Sections 204, 210, 221, 226.7, 233, 246, 510, 512, 1194, 1197,
19 1197.1, 1198 & 2802, The Fair Labor Standards Act and federal regulations promulgated
20 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
21 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
22 held to constitute unfair competition, including restitution of wages wrongfully withheld.

23 46. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
24 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
25 unscrupulous or substantially injurious to employees, and were without valid justification or
26 utility for which this Court should issue equitable and injunctive relief pursuant to Section
27 17203 of the California Business & Professions Code, including restitution of wages
28 wrongfully withheld.

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

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

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

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

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

26 52. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and
28 the other members of the CALIFORNIA CLASS, including earned wages for all time

1 worked, and has deprived them of valuable rights and benefits guaranteed by law and
2 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
3 allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

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

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

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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]**

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 himself 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 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

28 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not

1 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
3 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

4 93. DEFENDANT further violated 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 rest 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 rest period was not provided.

9 94. 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 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 2802]**

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

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

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

22 An employer shall indemnify his or her employee for all necessary
23 expenditures or losses incurred by the employee in direct consequence of the
24 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.

25 97. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
26 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
27 CLASS members for required expenses incurred in the discharge of their job duties for
28

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

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

20 **SEVENTH CAUSE OF ACTION**

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

22 **[Cal. Lab. Code § 226]**

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

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

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

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

21 101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
22 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
23 wage statements which failed to show, among other things, the correct gross and net wages
24 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
25 employees with an accurate itemized wage statement in writing showing, among other
26 things, gross wages earned and all applicable hourly rates in effect during the pay period and
27 the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT
28 violated Cal. Lab. Code Section 226(a)(8) by failing to list the correct name of the legal
entity that employed PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
Members. 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

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

11 12 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

21 As used in this article:

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

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

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

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

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

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

108. Cal. Lab. Code § 203 states:

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

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

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

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

1 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and
2 statutory costs as allowed.

3 **NINTH CAUSE OF ACTION**

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

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

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

7 112. PLAINTIFF incorporates by reference the allegations set forth in the prior
8 paragraphs as though fully set forth at this point.

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

19 114. PLAINTIFF, and such persons that may be added from time to time who
20 satisfy the requirements and exhaust the administrative procedures under the Private
21 Attorney General Act, brings this Representative Action on behalf of the State of California
22 with respect to himself and all individuals who are or previously were employed by
23 DEFENDANT in California and classified as non-exempt employees (the "AGGRIEVED
24 EMPLOYEES") during the time period of February 3, 2020 until a date as determined by
25 the Court (the "PAGA PERIOD").

26 115. On February 3, 2021, PLAINTIFF gave written notice by electronic mail to
27 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
28 employer of the specific provisions of this code alleged to have been violated as required by

1 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
2 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
3 now commence a representative civil action under PAGA pursuant to Section 2699 as the
4 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
5 defined.

6 116. The policies, acts and practices heretofore described were and are an unlawful
7 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
8 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
9 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
10 wages, (d) failed to pay minimum wages, (e) failed to pay wages when due, and (f) failed to
11 reimburse employees for required expenses, all in violation of the applicable Labor Code
12 sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a),
13 226.7, 233, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
14 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable
15 Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such
16 conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
17 Code Private Attorney General Act of 2004 as the representative of the State of California
18 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
19 EMPLOYEES.

20 117. All of the conduct and violations alleged herein occurred during the PAGA
21 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
22 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
23 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
24 2018 AJDAR 12157 (Certified for Publication 12/19/18).

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

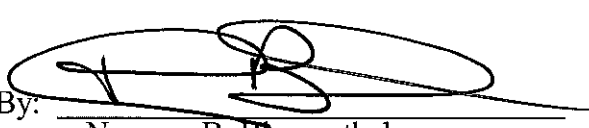
15 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

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

- 1 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
4 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
5 costs of suit;
- 6 F) The wages of all terminated individuals in the CALIFORNIA LABOR
7 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
8 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
9 and,
- 10 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
11 1197.
- 12 3. On behalf of the State of California and with respect to all AGGRIEVED
13 EMPLOYEES:
- 14 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
15 General Act of 2004.
- 16 4. On all claims:
- 17 A) An award of interest, including prejudgment interest at the legal rate;
- 18 B) Such other and further relief as the Court deems just and equitable; and,
- 19 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
20 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
21 §2802.

22 Dated: June 22, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

23
24
25
26 By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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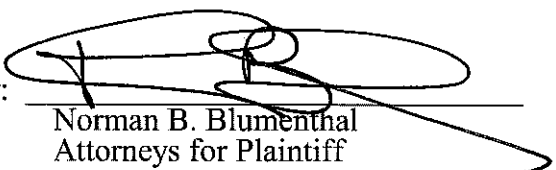
DEMAND FOR A JURY TRIAL

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

Dated: June 22, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____

A handwritten signature in black ink, appearing to read "Norman B. Blumenthal", is written over a horizontal line. The signature is stylized with large, overlapping loops.

Norman B. Blumenthal
Attorneys for Plaintiff