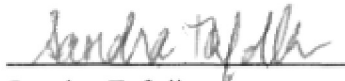


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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF KINGS**

ADRIAN LEON and RICHARD  
RODRIGUEZ, JR., on behalf of themselves  
and on behalf of all persons similarly  
situated,

Plaintiffs,

vs.

CALAVERAS MATERIALS, INC., a  
California Corporation; LEHIGH HANSON  
SERVICES LLC, a Limited Liability  
Company; SOUTH VALLEY MATERIALS,  
INC., a Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

**Case No. 21C-0105**

**CONSOLIDATED 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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and.
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT CAL. LAB. CODE § 2699, *et seq.*

**DEMAND FOR A JURY TRIAL**

1  
2 Plaintiffs Adrian Leon and Richard Rodriguez, Jr., (“PLAINTIFFS”) individuals, on  
3 behalf of themselves and all other similarly situated current and former employees allege on  
4 information and belief, except for their own acts and knowledge which are based on personal  
5 knowledge, the following:

6  
7 **THE PARTIES**

8 1. Defendant Calaveras Materials, Inc. is a California corporation that at all relevant  
9 times mentioned herein conducted and continues to conduct substantial business in the state of  
10 California.

11 2. Defendant Lehigh Hanson Services LLC is a limited liability company that at all  
12 relevant times mentioned herein conducted and continues to conduct substantial business in the  
13 state of California.

14 3. Defendant South Valley Materials, Inc. is a California corporation that at all relevant  
15 times mentioned herein conducted and continues to conduct substantial business in the state of  
16 California.

17 4. PLAINTIFFS allege there has existed a unity of interest and ownership between  
18 Defendants such that any individuality and separateness between the entities has ceased and all  
19 Defendants are referred to herein as “DEFENDANT.”

20 5. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers  
21 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest  
22 and ownership between Calaveras Materials, Inc., Lehigh Hanson Services LLC, and South  
23 Valley Materials, Inc. such that any individuality and separateness between the entities has  
24 ceased. Calaveras Materials, Inc., Lehigh Hanson Services LLC, and South Valley Materials, Inc.  
25 are therefore alter egos of each other. Adherence to the fiction of the separate existence of  
26 DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice  
27 by protecting DEFENDANT from liability for the wrongful acts committed by them.

28 6. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other

1 for the following reasons:

2 (A) On the California Secretary of State's website  
3 (<https://businesssearch.sos.ca.gov/>) Calaveras Materials, Inc., Lehigh  
4 Hanson Services LLC, and South Valley Materials, Inc. have the same  
5 entity address and/or mailing address and/or Agent for Service of Process;  
6 and,

7 (B) On information and belief Calaveras Materials, Inc., Lehigh Hanson  
8 Services LLC, and South Valley Materials, Inc. utilize the same  
9 standardized employment forms and issue the same employment policies  
10 and same pay stubs.

11 7. DEFENDANT specializes in the production and supply of asphalt, ready-mix  
12 concrete and aggregates.

13 8. Plaintiff Leon was employed by DEFENDANT from December of 2016 to  
14 February 2, 2021 and was at all times classified by DEFENDANT as a non-exempt employee,  
15 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment  
16 of minimum and overtime wages due for all time worked.

17 9. Plaintiff Rodriguez was employed by DEFENDANT from July of 2017 to  
18 February 2, 2021 and was at all times classified by DEFENDANT as a non-exempt employee,  
19 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment  
20 of minimum and overtime wages due for all time worked.

21 10. PLAINTIFFS bring this Class Action on behalf of themselves and a California  
22 class, defined as all individuals who are or previously were employed by Calaveras Materials, Inc.  
23 and/or Lehigh Hanson Services LLC, and/or South Valley Materials, Inc. and classified as non-  
24 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning April  
25 5, 217 through the earlier of preliminary approval or June 17, 2022 (the "CALIFORNIA  
26 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA  
27 CLASS Members is under five million dollars (\$5,000,000.00).

28 11. PLAINTIFFS bring this Class Action on behalf of themselves and a

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

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

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

28 ///

## THE CONDUCT

14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. DEFENDANT required PLAINTIFFS and the CALIFORNIA CLASS Members to work off the clock without paying them for all the time they performed work duties, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFFS and CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. DEFENDANT failed to pay. From time to time, DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments. DEFENDANT also engaged in the practice of requiring PLAINTIFFS and CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANT to answer a COVID-19 questionnaire regarding any symptoms and possible exposure to COVID-19. DEFENDANT failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members for their time spent performing the mandatory waiting off the clock during the shift change and completing the COVID-19 questionnaire. Even if PLAINTIFFS and other CALIFORNIA CLASS Members showed up to DEFENDANT's work place and then failed the questionnaire, DEFENDANT still failed to pay PLAINTIFFS the proper reporting time pay wages. Additionally, DEFENDANT, as a matter of established company policy and procedure, administered a practice of rounding the actual time worked and recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFFS and

1 CALIFORNIA CLASS Members were paid less than they would have been paid had they been  
2 paid for actual recorded time rather than “rounded” time. As a result, PLAINTIFFS and other  
3 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by from  
4 time to time working without their time being accurately recorded and without compensation  
5 at the applicable minimum wage and overtime rates. DEFENDANT’s policy and practice not  
6 to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is  
7 evidenced by DEFENDANT’s business records.

8 15. State and federal law provides that employees must be paid overtime at one-and-  
9 one-half times their “regular rate of pay.” PLAINTIFFS and other AGGRIEVED  
10 EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific  
11 elements of an employee’s performance.

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

26 17. As a result of their rigorous work schedules, PLAINTIFFS and other  
27 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal  
28 breaks and were not fully relieved of duty for meal periods. PLAINTIFFS and other

1 CALIFORNIA CLASS Members were from time to time required to perform work as ordered  
2 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal  
3 break. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS  
4 Members with a second off-duty meal period from time to time in which these employees were  
5 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFFS and  
6 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional  
7 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

1 PLAINTIFFS and other CALIFORNIA CLASS Members could not leave the work premises  
2 during their rest period.

3 19. DEFENDANT also failed to provide PLAINTIFFS and the other members of the  
4 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,  
5 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that  
6 every employer shall furnish each of his or her employees with an accurate itemized wage  
7 statement in writing showing, among other things, gross wages earned and all applicable hourly  
8 rates in effect during the pay period and the corresponding amount of time worked at each  
9 hourly rate. PLAINTIFFS and CALIFORNIA CLASS Members were paid on an hourly basis.  
10 As such, the wage statements should reflect all applicable hourly rates during the pay period and  
11 the total hours worked, and the applicable pay period in which the wages were earned pursuant  
12 to California Labor Code Section 226(a)(2). The wage statements DEFENDANT provided to  
13 PLAINTIFFS and other CALIFORNIA CLASS Members failed to identify such information.  
14 More specifically, the wage statements failed to identify the accurate total hours worked each  
15 pay period. When the hours shown on the wage statements were added up, they did not equal  
16 the actual total hours worked during the pay period. DEFENDANT also violated Cal. Lab.  
17 Code Section 226(a)(8) by failing to list the correct legal entity that was the employer of  
18 PLAINTIFFS and other CALIFORNIA CLASS Members. Aside, from the violations listed  
19 above, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all  
20 the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time  
21 to time provided PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage  
22 statements which violated Cal. Lab. Code § 226.

23 20. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any  
24 employment are due and payable twice during each calendar month, on days designated in  
25 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly  
26 requires employers to pay employees all wages owed within seven (7) days of the close of the  
27 payroll period. DEFENDANT from time to time failed to pay PLAINTIFFS and other  
28 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of

1 the payroll period.

2 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer  
3 to collect or receive from an employee any part of wages theretofore paid by said employer to  
4 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and other  
5 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation  
6 payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose  
7 all aspects of the deductions from compensation payable to PLAINTIFFS and CALIFORNIA  
8 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at  
9 each applicable pay period and upon termination. PLAINTIFFS and members of the  
10 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages  
11 according to proof, related penalties, interest, attorney fees and costs.

12 22. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other  
13 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay.  
14 Specifically, PLAINTIFFS and other non-exempt employees earn non-discretionary  
15 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick  
16 pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

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

27 24. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS  
28 Members as a business expense, were required by DEFENDANT to use their own personal

1 cellular phones as a result of and in furtherance of their job duties as employees for  
2 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
3 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a  
4 result, in the course of their employment with DEFENDANT, PLAINTIFFS and other members  
5 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but  
6 were not limited to, costs related to the use of their personal cellular phones all on behalf of and  
7 for the benefit of DEFENDANT.

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

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

1           27. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally  
2 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage  
3 Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due  
4 to PLAINTIFFS. DEFENDANT did not have a policy or practice which provided timely off-  
5 duty meal and rest breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for  
6 PLAINTIFFS' missed meal and rest breaks. The nature of the work performed by the  
7 PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS' duties  
8 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide  
9 PLAINTIFFS with the legally required meal periods is evidenced by DEFENDANT's business  
10 records. DEFENDANT also required PLAINTIFFS to work off the clock without paying  
11 PLAINTIFFS for all the time PLAINTIFFS were working for DEFENDANT and performing  
12 duties, specifically by failing to provide enough labor hours to accomplish all the job tasks that  
13 DEFENDANT expected PLAINTIFFS to complete on a daily and/or weekly basis. The amount  
14 in controversy for PLAINTIFFS individually do not exceed the sum or value of \$75,000. To  
15 date, DEFENDANT has not fully paid PLAINTIFFS for all PLAINTIFFS' wages still owed to  
16 PLAINTIFFS or any penalties owed to PLAINTIFFS under California Labor Code § 203.

17  
18                                   **JURISDICTION AND VENUE**

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

23           29. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
24 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT, and  
25 DEFENDANT (I) currently maintains and at all relevant times maintained offices and facilities  
26 in this County and/or conducts substantial business in this County, and (ii) committed the  
27 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.  
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**THE CALIFORNIA CLASS**

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

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

32. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engages in a practice whereby DEFENDANT fails to record all meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though DEFENDANT enjoys the benefit of this work, requires employees to perform this work and permits or suffers to permit this work.

33. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every

1 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,  
2 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as  
3 causation, damages, and reliance are not elements of this claim.

4 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
5 CLASS Members is impracticable.

6 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under California  
7 law by:

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

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

- 25 (a) The persons who comprise the CALIFORNIA CLASS are so numerous  
26 that the joinder of all such persons is impracticable and the disposition of  
27 their claims as a class will benefit the parties and the Court;
- 28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CALIFORNIA  
2 CLASS will apply to every member of the CALIFORNIA CLASS;

3 ( The claims of the representative PLAINTIFFS are typical of the claims of  
4 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the  
5 other members of the CALIFORNIA CLASS, is classified as a non-  
6 exempt employee paid on an hourly basis who has been subjected to the  
7 DEFENDANT's deceptive practice and policy which failed to provide the  
8 legally required meal and rest periods to the CALIFORNIA CLASS and  
9 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA  
10 CLASS. PLAINTIFFS sustained economic injury as a result of  
11 DEFENDANT's employment practices. PLAINTIFFS and the members  
12 of the CALIFORNIA CLASS were and are similarly or identically harmed  
13 by the same unlawful, deceptive and unfair misconduct engaged in by  
14 DEFENDANT; and,

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

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

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

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

1 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 to the CALIFORNIA CLASS, thereby making final class-wide relief  
2 appropriate with respect to the CALIFORNIA CLASS as a whole;

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

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

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

14  
15 **THE CALIFORNIA LABOR SUB-CLASS**

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

25 41. DEFENDANT, as a matter of company policy, practice and procedure, and in  
26 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
27 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
28 wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation

1 for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR  
2 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT  
3 enjoys the benefit of this work, requires employees to perform this work and permits or suffers  
4 to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS  
5 Members wages to which these employees are entitled in order to unfairly cheat the competition  
6 and unlawfully profit. To the extent equitable tolling operates to toll claims by the  
7 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR  
8 SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

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

CALIFORNIA LABOR SUB-CLASS; and,

(e) Whether DEFENDANT's conduct was willful.

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

(a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

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

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

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

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

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

(a) The persons who comprise the CALIFORNIA 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;

© The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, is a non-exempt employee paid on an hourly basis who has been subjected to the DEFENDANT's practice and policy which fails to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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.

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

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of

1 separate actions by individual members of the CALIFORNIA LABOR  
2 SUB-CLASS will create the risk of:

- 3 1) Inconsistent or varying adjudications with respect to individual  
4 members of the CALIFORNIA LABOR SUB-CLASS which  
5 would establish incompatible standards of conduct for the parties  
6 opposing the CALIFORNIA LABOR SUB-CLASS; or,  
7 2) Adjudication with respect to individual members of the  
8 CALIFORNIA LABOR SUB-CLASS which would as a practical  
9 matter be dispositive of interests of the other members not party to  
10 the adjudication or substantially impair or impede their ability to  
11 protect their interests.

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

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

- 26 1) The interests of the members of the CALIFORNIA LABOR SUB-  
27 CLASS in individually controlling the prosecution or defense of  
28 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 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.

48. This Court should permit this action to be maintained as a Class Action pursuant

1 to Cal. Code of Civ. Proc. § 382 because:

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
2 ascertainable from the business records of DEFENDANT. The  
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA  
4 CLASS Members who worked for DEFENDANT in California at any  
5 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,  
6 (I) Class treatment provides manageable judicial treatment calculated to bring  
7 a efficient and rapid conclusion to all litigation of all wage and hour  
8 related claims arising out of the conduct of DEFENDANT as to the  
9 members of the CALIFORNIA LABOR SUB-CLASS.

10  
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

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

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

18 50. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.  
19 Code § 17021.

20 51. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
21 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section  
22 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
23 competition as follows:

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

28 Cal. Bus. & Prof. Code § 17203.

1           52. By the conduct alleged herein, DEFENDANT has engaged and continues to  
2 engage in a business practice which violates California law, including but not limited to, the  
3 applicable Industrial Wage Order(s), the California Code of Regulations and the California  
4 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198  
5 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
7 constitute unfair competition, including restitution of wages wrongfully withheld.

8           53. By the conduct alleged herein, DEFENDANT's practices are unlawful and unfair  
9 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous  
10 or substantially injurious to employees, and are without valid justification or utility for which  
11 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the  
12 California Business & Professions Code, including restitution of wages wrongfully withheld.

13           54. By the conduct alleged herein, DEFENDANT's practices are deceptive and  
14 fraudulent in that DEFENDANT's policy and practice fails to provide the legally mandated  
15 meal and rest periods, and the required amount of compensation for missed meal and rest  
16 periods, reporting time pay, and overtime and minimum wages owed, due to a business practice  
17 that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare  
18 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this  
19 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,  
20 including restitution of wages wrongfully withheld.

21           55. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair  
22 and deceptive in that DEFENDANT's employment practices cause PLAINTIFFS and the other  
23 members of the CALIFORNIA CLASS to be underpaid during their employment with  
24 DEFENDANT.

25           56. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair  
26 and deceptive in that DEFENDANT's policies, practices and procedures fail to provide all  
27 legally required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA  
28 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

1           57.     Therefore, PLAINTIFFS demands on behalf of themselves and on behalf of each  
2 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty  
3 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
4 for each workday in which a second off-duty meal period was not timely provided for each ten  
5 (10) hours of work.

6           58.     PLAINTIFFS further demands on behalf of themselves and each member of the  
7 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off  
8 duty paid rest period was not timely provided as required by law.

9           59.     By and through the unlawful and unfair business practices described herein,  
10 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the  
11 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and  
12 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
13 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
14 to unfairly compete against competitors who comply with the law.

15           60.     All the acts described herein as violations of, among other things, the Industrial  
16 Welfare Commission Wage Orders, the California Code of Regulations, and the California  
17 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive  
18 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business  
19 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

20           61.     PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled  
21 to, and do, seek such relief as may be necessary to restore to them the money and property  
22 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the  
23 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
24 unfair business practices, including earned but unpaid wages for all time worked.

25           62.     PLAINTIFFS and the other members of the CALIFORNIA CLASS are further  
26 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
27 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
28 engaging in any unlawful and unfair business practices in the future.

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

## **SECOND CAUSE OF ACTION**

### **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

68. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including reporting time pay and minimum wage compensation and interest thereon, together

1 with the costs of suit.

2 69. DEFENDANT maintains a wage practice of paying PLAINTIFFS and the other  
3 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of  
4 time they work. As set forth herein, DEFENDANT's policy and practice is to unlawfully and  
5 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the  
6 CALIFORNIA LABOR SUB-CLASS.

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

11 71. In committing these violations of the California Labor Code, DEFENDANT  
12 inaccurately calculates the correct time worked and consequently underpays the actual time  
13 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.  
14 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
15 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
16 requirements and other applicable laws and regulations.

17 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
18 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not  
19 receive the correct reporting time pay and minimum wage compensation for their time worked  
20 for DEFENDANT.

21 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and  
22 the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked  
23 that they are entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to  
24 accurately pay the PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS the  
25 wages for the time they work in accordance with 1197 & 1197.1, even though the PLAINTIFFS  
26 and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly required,  
27 permitted or suffered to work, and do in fact work, off the clock time as to which  
28 DEFENDANT fails to accurately record and pay as evidenced by DEFENDANT's business

1 records and witnessed by employees.

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

7 75. DEFENDANT knew or should have known that PLAINTIFFS and the other  
8 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time  
9 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,  
10 to not pay employees for their labor as a matter of company policy, practice and procedure, and  
11 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members  
12 of the CALIFORNIA LABOR SUB-CLASS the correct reporting time pay and minimum wages  
13 for their time worked.

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

22 77. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
23 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory  
24 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as  
25 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's  
26 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS  
27 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover  
28 statutory costs.

1  
2 **THIRD CAUSE OF ACTION**

3 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

22 82. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
23 including reporting time pay and minimum wage and overtime compensation and interest  
24 thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the  
25 employment of an employee for longer hours than those fixed by the Industrial Welfare  
26 Commission is unlawful.

27 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and  
28 CALIFORNIA LABOR SUB-CLASS Members are required, permitted or suffered by

1 DEFENDANT to work for DEFENDANT and are not paid for all the time they work, including  
2 overtime work.

3 84. DEFENDANT's unlawful wage and hour practices manifested, without limitation,  
4 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing  
5 a policy and practice that failed to accurately record overtime work by PLAINTIFFS and other  
6 CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to  
7 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime  
8 work, including, the overtime work performed in excess of eight (8) hours in a workday, and/or  
9 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

10 85. In committing these violations of the California Labor Code, DEFENDANT  
11 inaccurately records overtime worked and consequently underpays the overtime worked by  
12 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted  
13 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation  
14 of the California Labor Code, the Industrial Welfare Commission requirements and other  
15 applicable laws and regulations.

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

20 87. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
21 the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not  
22 receiving full compensation for overtime worked.

23 88. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
24 from the overtime requirements of the law. None of these exemptions are applicable to the  
25 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,  
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not  
27 subject to a valid collective bargaining agreement that would preclude the causes of action  
28 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of

1 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations  
2 of non-negotiable, non-waiveable rights provided by the State of California.

3 89. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and  
4 the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for overtime  
5 worked that they are entitled to, constituting a failure to pay all earned wages.

6 90. DEFENDANT fails to accurately pay the PLAINTIFFS and the other members  
7 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which  
8 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,  
9 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR  
10 SUB-CLASS are required to work, and did in fact work, overtime as to which DEFENDANT  
11 fails to accurately record and pay as evidenced by DEFENDANT's business records and  
12 witnessed by employees.

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

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

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

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

5 94. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
6 CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory  
7 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as  
8 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's  
9 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS  
10 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover  
11 statutory costs.

12  
13 **FOURTH CAUSE OF ACTION**

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

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

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

18 95. PLAINTIFFS, 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 96. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all  
22 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR  
23 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature  
24 of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS  
25 does not prevent these employees from being relieved of all of their duties for the legally  
26 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and  
27 other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved  
28 of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to

1 provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally  
2 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's  
3 business records. Further, DEFENDANT fails to provide PLAINTIFFS and CALIFORNIA  
4 CLASS Members with a second off-duty meal period in some workdays in which these  
5 employees were required by DEFENDANT to work ten (10) hours of work. As a result,  
6 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeit  
7 meal breaks without additional compensation and in accordance with DEFENDANT's strict  
8 corporate policy and practice.

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

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

### 18 19 **FIFTH CAUSE OF ACTION**

#### 20 **For Failure to Provide Required Rest Periods**

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

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

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

27 100. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are  
28 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.

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

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

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

### **SIXTH CAUSE OF ACTION**

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

**[Cal. Lab. Code § 226]**

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

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

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

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

105. DEFENDANT also fails to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements

1 DEFENDANT provided to PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
2 Members failed to identify such information. More specifically, the wage statements failed to  
3 identify the accurate total hours worked each pay period. When the hours shown on the wage  
4 statements were added up, they did not equal the actual total hours worked during the pay  
5 period. Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFFS  
6 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*  
7 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other  
8 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated  
9 Cal. Lab. Code § 226.

10 106. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code  
11 § 226, causing injury and damages to PLAINTIFFS and the other members of the  
12 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs  
13 expended calculating the correct wages for all missed meal and rest breaks and the amount of  
14 employment taxes which were not properly paid to state and federal tax authorities. These  
15 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the  
16 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars  
17 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars  
18 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in  
19 an amount according to proof at the time of trial (but in no event more than four thousand  
20 dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA  
21 LABOR SUB-CLASS herein).

## 22 **SEVENTH CAUSE OF ACTION**

### 23 **For Failure to Reimburse Employees for Required Expenses**

24 **[Cal. Lab. Code § 2802]**

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

27 107. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members  
28

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

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

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

9 109. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,  
10 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-  
11 CLASS members for required expenses incurred in the discharge of their job duties for  
12 DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFFS and the  
13 CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not  
14 limited to, costs related to using their personal cellular phones and personal vehicles all on  
15 behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other  
16 CALIFORNIA LABOR SUB-CLASS Members are required by DEFENDANT to use their  
17 personal cell phones to respond to work related issues. DEFENDANT's policy, practice and  
18 procedure is to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
19 members for expenses resulting from using their personal cellular phones and personal  
20 vehicle for DEFENDANT within the course and scope of their employment for  
21 DEFENDANT. These expenses are necessary to complete their principal job duties.  
22 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this  
23 expectation. Although these expenses are necessary expenses incurred by PLAINTIFFS and  
24 the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT fails to indemnify and  
25 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these  
26 expenses as an employer is required to do under the laws and regulations of California.

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

**EIGHTH CAUSE OF ACTION**

**For Failure to Pay Wages When Due**

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

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

**and Against All Defendants)**

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

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

As used in this article:

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

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

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

114. Cal. Lab. Code § 202 provides, 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.

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

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

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

1 employee who is discharged or who quits, the wages of the employee shall  
2 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.

3 117. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-  
4 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages  
5 owed as required by law.

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

### 13 **NINTH CAUSE OF ACTION**

#### 14 **Wrongful Termination In Violation of Public Policy**

#### 15 **(By Plaintiff Leon Against All Defendants)**

16 119. Plaintiff Leon realleges and incorporates by reference, as though fully set forth  
17 herein, the prior paragraphs of this Complaint.

18 120. Subsequent to Plaintiff Leon's participation in protective activity by  
19 complaining to DEFENDANT of DEFENDANT's unlawful employment practices,  
20 DEFENDANT subjected Plaintiff Leon to adverse employment actions by retaliating against  
21 Plaintiff Leon. Specifically, after Plaintiff Leon complained to his supervisor(s), including  
22 but not limited to Luis Nunez the Fleet Manager at his work location, of DEFENDANT's  
23 unlawful employment practices in December of 2020, DEFENDANT terminated Plaintiff  
24 Leon's employment with RESPONDENT on February 2, 2021. As a result, there is a causal  
25 link between the protected activity and DEFENDANT's decision to terminate his  
26 employment, which is against public policy. In December of 2020, Plaintiff Leon  
27  
28

1 complained to his supervisors of what Plaintiff Leon thought to be DEFENDANT's  
2 breaking of the law as it related to smog tests Plaintiff Leon was performing for  
3 DEFENDANT's business. Plaintiff Leon informed DEFENDANT about such illegal smog  
4 test issues, but to no avail. As a direct consequence of Plaintiff Leon's complaints to  
5 DEFENDANT, DEFENDANT retaliated against Plaintiff Leon by terminating his  
6 employment on February 2, 2021.

7 121. Plaintiff Leon raised complaints of illegality while he worked for  
8 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT  
9 retaliated against him by taking adverse employment actions, including employment  
10 termination, against him.

11 122. As a proximate result of DEFENDANT'S willful, knowing, and intentional,  
12 Plaintiff Leon has suffered and continues to suffer humiliation, emotional distress, and  
13 mental and physical pain and anguish, all to her damage in a sum according to proof.

14 123. As a result of DEFENDANT'S adverse employment actions against Plaintiff  
15 Leon, Plaintiff Leon has suffered general and special damages in sums according to proof.

16 124. DEFENDANT'S misconduct was committed intentionally, in a malicious,  
17 oppressive manner, and fraudulent manner entitling Plaintiff Leon to punitive damages  
18 against DEFENDANT.

19 **TENTH CAUSE OF ACTION**

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

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

22 **(By All Plaintiff and Against All DEFENDANTS)**

23 125. PLAINTIFFS incorporate by reference the allegations set forth in the prior  
24 paragraphs as though fully set forth at this point.

25 126. PAGA is a mechanism by which the State of California itself can enforce state  
26 labor laws through the employee suing under the PAGA who do so as a the proxy or agent  
27 of the state's labor law enforcement agencies. An action to recover civil penalties under  
28 PAGA is fundamentally a law enforcement action designed to protect the public and not to

1 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,  
2 but to create a means of “deputizing” citizens as private attorneys general to enforce the  
3 Labor Code. In enacting PAGA, the California Legislature specified that “it was... in the  
4 public interest to allow aggrieved employees, acting as private attorneys general to recover  
5 civil penalties for Labor Code violations ... “Stats. 2003, ch. 906 § 1. Accordingly, PAGA  
6 claims cannot be subject to arbitration.

7 127. PLAINTIFFS, and such persons that may be added from time to time who  
8 satisfy the requirements and exhaust the administrative procedures under the Private  
9 Attorney General Act, bring this Representative Action on behalf of the State of California  
10 with respect to themselves and all individuals who are or previously were employed by  
11 Calaveras Materials, Inc., and/or Lehigh Hanson Services LLC, and/or South Valley  
12 Materials, Inc., in California and classified as non-exempt employees (the “AGGRIEVED  
13 EMPLOYEES”) during the time period of April 5, 2020 through June 18, 2022 (the “PAGA  
14 PERIOD”).

15 128. On March 17, 2021, PLAINTIFFS gave written notice by electronic mail to  
16 the Labor and Workforce Development Agency (the “Agency”) and by certified mail to the  
17 employer of the specific provisions of this code alleged to have been violated as required by  
18 Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS to add these  
19 allegations to the Complaint has expired. As a result, pursuant to section 2699.3,  
20 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to  
21 Section 2699 as the proxies of the State of California with respect to all AGGRIEVED  
22 EMPLOYEES as herein defined.

23 129. The policies, acts and practices heretofore described were and are an unlawful  
24 business practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other  
25 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly  
26 record and provide legally required meal and rest period, © failed to pay overtime wages,  
27 (d) failed to pay minimum wages, (e) failed to reimburse employees for required expenses,  
28 and (f) failed to pay wages when due, all in violation of the applicable Labor Code sections

1 listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210. 221, 226(a), 226.7, 227.3,  
2 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of  
3 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial  
4 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.  
5 PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the Labor Code  
6 Private Attorney General Act of 2004 as the representatives of the State of California for the  
7 illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

8  
9 **PRAYER FOR RELIEF**

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

12 1. On behalf of the CALIFORNIA CLASS:

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

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

- 24 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth  
25 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
26 action pursuant to Cal. Code of Civ. Proc. § 382;  
27 B) Compensatory damages, according to proof at trial, including compensatory  
28 damages for minimum and overtime compensation due PLAINTIFFS 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) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;

D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

E) 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;

F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

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

3. On behalf of Plaintiff Leon for the Eighth cause of action:

A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

B) Special and General damages according to proof;

C) Statutory damages, penalties and attorney's fees;

D) For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;

E) For loss of earnings (both past and future); and,

F) For interest at the legal rate in an amount according to proof.

4. On all claims:

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

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- B) Such other and further relief as the Court deems just and equitable; and,
  - C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.
5. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES;
- A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and
  - B) An award of attorneys’ fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: July 19, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

**DEMAND FOR A JURY TRIAL**

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

Dated: July 19, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw

Norman B. Blumenthal

Nicholas J. De Blouw

Attorneys for Plaintiff