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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JUNO CHUA, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

BEECAN HEALTH LLC, a California
Limited Liability Company; SERRANO
POST ACUTE, LLC, a California Limited
Liability Company; CORONA POST
ACUTE, LLC, a California Limited Liability
Company; CALIFORNIA POST ACUTE
LLC, a California Limited Liability
Company; LA FUENTE CARE POST
ACUTE LLC, a California Limited Liability
Company; MONROVIA POST ACUTE,
LLC, a California Limited Liability
Company; ROYAL GARDENS
HEALTHCARE, LLC, a California Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **21STCV24458**

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

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Beecan Health LLC is a California limited liability company that at all
7 relevant times mentioned herein conducted and continues to conduct substantial business in the
8 state of California.

9 2. Defendant Serrano Post Acute, LLC is a California limited liability company that
10 at all relevant times mentioned herein conducted and continues to conduct substantial business
11 in the state of California.

12 3. Defendant Corona Post Acute, LLC is a California limited liability company that
13 at all relevant times mentioned herein conducted and continues to conduct substantial business
14 in the state of California.

15 4. Defendant California Post Acute LLC is a California limited liability company that
16 at all relevant times mentioned herein conducted and continues to conduct substantial business
17 in the state of California.

18 5. Defendant La Fuente Care Post Acute LLC is a California limited liability company
19 that at all relevant times mentioned herein conducted and continues to conduct substantial
20 business in the state of California.

21 6. Defendant Monrovia Post Acute, LLC is a California limited liability company that
22 at all relevant times mentioned herein conducted and continues to conduct substantial business
23 in the state of California.

24 7. Defendant Royal Gardens Healthcare, LLC is a California limited liability company
25 that at all relevant times mentioned herein conducted and continues to conduct substantial
26 business in the state of California.

1 8. PLAINTIFF alleges there has existed a unity of interest and ownership between
2 Defendants Beecan Health LLC, Serrano Post Acute, LLC, Corona Post Acute, LLC, California Post
3 Acute LLC, La Fuente Care Post Acute LLC, Monrovia Post Acute, LLC and Royal Gardens
4 Healthcare, LLC such that any individuality and separateness between the entities has ceased and
5 all Defendants are referred to herein as “DEFENDANT.”

6 9. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
7 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
8 and ownership between DEFENDANT such that any individuality and separateness between
9 the entities has ceased. Beecan Health LLC, Serrano Post Acute, LLC, Corona Post Acute, LLC,
10 California Post Acute LLC, La Fuente Care Post Acute LLC, Monrovia Post Acute, LLC and Royal
11 Gardens Healthcare, LLC and DOES 1-10 are therefore alter egos of each other. Adherence to
12 the fiction of the separate existence of DEFENDANT would permit an abuse of the corporate
13 privilege, and would promote injustice by protecting DEFENDANT from liability for the
14 wrongful acts committed by them.

15 10. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other
16 for the following reasons:

17 (A) On the California Secretary of State’s website
18 (<https://businesssearch.sos.ca.gov/>) Beecan Health LLC, Serrano Post Acute,
19 LLC, Corona Post Acute, LLC, California Post Acute LLC, La Fuente Care Post
20 Acute LLC, Monrovia Post Acute, LLC and Royal Gardens Healthcare, LLC
21 have the same entity address and/or mailing address and/or Agent for
22 Service of Process; and,

23 (B) On information and belief Beecan Health LLC, Serrano Post Acute, LLC,
24 Corona Post Acute, LLC, California Post Acute LLC, La Fuente Care Post
25 Acute LLC, Monrovia Post Acute, LLC and Royal Gardens Healthcare, LLC
26 utilize the same standardized employment forms and issue the same
27 employment policies and same pay stubs; and,

28 11. PLAINTIFF was employed by DEFENDANT from December of 2017 to July 4,

1 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
2 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
3 and overtime wages due for all time worked.

4 12. PLAINTIFF brings this Class Action on behalf of himself and a California class,
5 defined as all individuals who are or previously were employed by Beecan Health LLC and/or
6 Serrano Post Acute, LLC, and/or Corona Post Acute, LLC and/or California Post Acute LLC and/or
7 La Fuente Care Post Acute LLC and/or Monrovia Post Acute, LLC and/or Royal Gardens Healthcare,
8 LLC and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during
9 the period of time from March 5, 2020 through September 22, 2022 (the "CALIFORNIA
10 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
11 CLASS Members is under five million dollars (\$5,000,000.00).

12 13. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
13 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
14 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which
15 failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged
16 herein is an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
17 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
18 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
19 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
20 the other members of the CALIFORNIA CLASS who have been economically injured by
21 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
22 equitable relief.

23 14. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
25 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
26 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
27 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
28 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that

1 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
2 responsible in some manner for one or more of the events and happenings that proximately
3 caused the injuries and damages hereinafter alleged.

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

12 THE CONDUCT

13
14 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
15 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including
17 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
18 and CALIFORNIA CLASS Members to work without paying them for all the time they were
19 under DEFENDANT's control. DEFENDANT required PLAINTIFF and the CALIFORNIA
20 CLASS Members to work off the clock, including, but not limited to, time spent undergoing
21 mandatory drug testing or any other testing and/or examination required as a condition of
22 employment. DEFENDANT also required PLAINTIFF and the CALIFORNIA CLASS
23 Members to work off the clock without paying them for all the time they performed post-shift
24 duties, specifically by failing to provide enough labor hours to accomplish all the job tasks that
25 DEFENDANT expected PLAINTIFF and CALIFORNIA CLASS Members to complete on a
26 daily and/or weekly basis. DEFENDANT failed to pay PLAINTIFF and CALIFORNIA
27 CLASS Members for the time they spent working after they had already clocked out of
28 DEFENDANT's timekeeping system at the end of their work shifts. Additionally, from time to

1 time, DEFENDANT required PLAINTIFF to work while clocked out during what was
2 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time
3 interrupted by work assignments. Further, PLAINTIFF and other members of the
4 CALIFORNIA CLASS from time to time were not paid wages for all time worked, including
5 overtime wages, such that in the aggregate employees were underpaid wages as a result of
6 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. As
7 a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and
8 overtime compensation by from time to time working without their time being accurately
9 recorded and without compensation at the applicable minimum wage and overtime rates.
10 DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
11 Members for all time worked is evidenced by DEFENDANT's business records.

12 17. State and federal law provides that employees must be paid overtime at one-and-
13 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
14 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
15 employee's performance.

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

1 DEFENDANT.

2 19. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
4 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
5 CALIFORNIA CLASS Members were from time to time required to perform work as ordered
6 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
7 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
8 Members with a second off-duty meal period from time to time in which these employees were
9 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
10 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
11 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

1 locations where employees may take their rest period. Employers cannot impose controls that
2 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
3 DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
4 unconstrained walks and was unlawful based on Defendant's rule which stated PLAINTIFF and
5 other CALIFORNIA CLASS Members could not leave the work premises during their rest
6 period.

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

25 22. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
26 employment are due and payable twice during each calendar month, on days designated in
27 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
28 requires employers to pay employees all wages owed within seven (7) days of the close of the

1 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
2 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
3 the payroll period.

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

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

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

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

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

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

1 promulgated thereunder as herein alleged.

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

17 **JURISDICTION AND VENUE**

18
19 30. 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 PLAINTIFF and similarly situated employees
22 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

THE CALIFORNIA CLASS

32. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of the CALIFORNIA CLASS during 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).

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

34. 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 PLAINTIFF 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.

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

36. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA

1 CLASS Members is impracticable.

2 37. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
3 law by:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 sustained by the individual CALIFORNIA CLASS Members when
2 compared to the substantial expense and burden of individual
3 prosecution of this litigation;

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

6 A. Inconsistent or varying adjudications with respect to
7 individual members of the CALIFORNIA CLASS, which
8 would establish incompatible standards of conduct for the
9 DEFENDANT; and/or,

10 B. Adjudications with respect to individual members of the
11 CALIFORNIA CLASS would as a practical matter be
12 dispositive of the interests of the other members not parties
13 to the adjudication or substantially impair or impede their
14 ability to protect their interests;

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

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

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

28 (a) The questions of law and fact common to the CALIFORNIA CLASS

1 predominate over any question affecting only individual CALIFORNIA
2 CLASS Members because the DEFENDANT's employment practices are
3 applied with respect to the CALIFORNIA CLASS;

4 (b) A Class Action is superior to any other available method for the fair and
5 efficient adjudication of the claims of the members of the CALIFORNIA
6 CLASS because in the context of employment litigation a substantial
7 number of individual CALIFORNIA CLASS Members will avoid
8 asserting their rights individually out of fear of retaliation or adverse
9 impact on their employment;

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

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

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

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

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

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

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

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

10 42. DEFENDANT, as a matter of company policy, practice and procedure, and in
11 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
12 requirements, and the applicable provisions of California law, intentionally, knowingly, and
13 wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation
14 for the time worked by PLAINTIFF and the other members of the CALIFORNIA CLASS and
15 reporting time wages owed to these employees, even though DEFENDANT enjoys the benefit
16 of this work, requires employees to perform this work and permits or suffers to permit this
17 work. DEFENDANT has denied these CALIFORNIA CLASS Members wages to which these
18 employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the
19 extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
20 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

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

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

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

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

14 46. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
15 law by:

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

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

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

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

- 9 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
10 that the joinder of all CALIFORNIA CLASS Members is impracticable
11 and the disposition of their claims as a class will benefit the parties and the
12 Court;
- 13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
14 that are raised in this Complaint are common to the CALIFORNIA
15 CLASS and will apply to every member of the CALIFORNIA CLASS ;
- 16 (c) The claims of the representative PLAINTIFF are typical of the claims of
17 each member of the CALIFORNIA CLASS . PLAINTIFF, like all the
18 other members of the CALIFORNIA CLASS , is a non-exempt employee
19 paid on an hourly basis who has been subjected to the DEFENDANT's
20 practice and policy which fails to pay the correct amount of wages due to
21 the CALIFORNIA CLASS . PLAINTIFF sustained economic injury as
22 a result of DEFENDANT's employment practices. PLAINTIFF and the
23 members of the CALIFORNIA CLASS were and are similarly or
24 identically harmed by the same unlawful, deceptive, unfair and pervasive
25 pattern of misconduct engaged in by DEFENDANT; and,
- 26 (d) The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA CLASS , and has retained
28 counsel who are competent and experienced in Class Action litigation.

1 There are no material conflicts between the claims of the representative
2 PLAINTIFF and the members of the CALIFORNIA CLASS that would
3 make class certification inappropriate. Counsel for the CALIFORNIA
4 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
5 Members.

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

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

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

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

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

27 (c) Common questions of law and fact predominate as to the members of the
28 CALIFORNIA CLASS , with respect to the practices and violations of

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

5 1) The interests of the members of the CALIFORNIA CLASS in
6 individually controlling the prosecution or defense of separate
7 actions in that the substantial expense of individual actions will be
8 avoided to recover the relatively small amount of economic losses
9 sustained by the individual CALIFORNIA CLASS Members
10 when compared to the substantial expense and burden of individual
11 prosecution of this litigation;

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

14 A. Inconsistent or varying adjudications with respect to
15 individual members of the CALIFORNIA CLASS , which
16 would establish incompatible standards of conduct for the
17 DEFENDANT; and/or,

18 B. Adjudications with respect to individual members of the
19 CALIFORNIA CLASS would as a practical matter be
20 dispositive of the interests of the other members not parties
21 to the adjudication or substantially impair or impede their
22 ability to protect their interests;

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

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

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

8 (a) The questions of law and fact common to the CALIFORNIA CLASS
9 predominate over any question affecting only individual CALIFORNIA
10 CLASS Members;

11 (b) A Class Action is superior to any other available method for the fair and
12 efficient adjudication of the claims of the members of the CALIFORNIA
13 CLASS because in the context of employment litigation a substantial
14 number of individual CALIFORNIA CLASS Members will avoid
15 asserting their rights individually out of fear of retaliation or adverse
16 impact on their employment;

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

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

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

28 (f) There is a community of interest in ensuring that the combined assets of

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

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

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

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

15
16 **FIRST CAUSE OF ACTION**

17 **For Unlawful Business Practices**

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

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

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

23 51. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
24 Code § 17021.

25 52. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
26 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
27 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
28 competition as follows:

1 Any person who engages, has engaged, or proposes to engage in unfair
2 competition may be enjoined in any court of competent jurisdiction. The court
3 may make such orders or judgments, including the appointment of a receiver, as
4 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.

5 Cal. Bus. & Prof. Code § 17203.

6 53. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to, the
8 applicable Industrial Wage Order(s), the California Code of Regulations and the California
9 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198
10 & 2802, The Fair Labor Standards Act and federal regulations promulgated thereunder, for
11 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
12 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
13 unfair competition, including restitution of wages wrongfully withheld.

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

19 55. By the conduct alleged herein, DEFENDANT's practices are deceptive and
20 fraudulent in that DEFENDANT's policy and practice fails to provide the legally mandated
21 meal and rest periods, and the required amount of compensation for missed meal and rest
22 periods, reporting time pay, and overtime and minimum wages owed, and failed to pay Fair
23 Labor Standards Act overtime wages due for overtime worked as a result of failing to include
24 non-discretionary incentive compensation into their regular rate for purposes of computing the
25 proper overtime pay, due to a business practice that cannot be justified, pursuant to the
26 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
27 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
28 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully

1 withheld.

2 56. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
3 and deceptive in that DEFENDANT's employment practices cause PLAINTIFF and the other
4 members of the CALIFORNIA CLASS to be underpaid during their employment with
5 DEFENDANT.

6 57. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
7 and deceptive in that DEFENDANT's policies, practices and procedures fail to provide all
8 legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
9 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

15 59. PLAINTIFF further demands on behalf of himself and each member of the
16 CALIFORNIA CLASS , one (1) hour of pay for each workday in which an off duty paid rest
17 period was not timely provided as required by law.

18 60. By and through the unlawful and unfair business practices described herein,
19 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
20 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
21 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
22 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
23 to unfairly compete against competitors who comply with the law.

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

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

6 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
7 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
8 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
9 engaging in any unlawful and unfair business practices in the future.

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

17
18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Minimum Wages**

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

21 **(By PLAINTIFF and the CALIFORNIA CLASS**

22 **and Against All Defendants)**

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

26 66. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT's willful and intentional violations of the California Labor Code and the
28 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate

1 and pay reporting time and minimum wages to PLAINTIFF and CALIFORNIA CLASS
2 Members.

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

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

8 69. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
9 including reporting time pay and minimum wage compensation and interest thereon, together
10 with the costs of suit.

11 70. DEFENDANT maintains a wage practice of paying PLAINTIFF and the other
12 members of the CALIFORNIA CLASS without regard to the correct amount of time they
13 work. As set forth herein, DEFENDANT's policy and practice is to unlawfully and
14 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
15 CALIFORNIA CLASS .

16 71. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
17 applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a policy and
18 practice that denies accurate compensation to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS in regards to minimum wage pay.

20 72. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately calculates the correct time worked and consequently underpays the actual time
22 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT
23 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
24 violation of the California Labor Code, the Industrial Welfare Commission requirements and
25 other applicable laws and regulations.

26 73. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS do not receive the correct
28 reporting time pay and minimum wage compensation for their time worked for DEFENDANT.

1 74. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and the other members
2 of the CALIFORNIA CLASS are paid less for time worked that they are entitled to,
3 constituting a failure to pay all earned wages. DEFENDANT fails to accurately pay the
4 PLAINTIFF and members of the CALIFORNIA CLASS the wages for the time they work in
5 accordance with 1197 & 1197.1, even though the PLAINTIFF and the other members of the
6 CALIFORNIA CLASS are regularly required, permitted or suffered to work, and do in fact
7 work, off the clock time as to which DEFENDANT fails to accurately record and pay as
8 evidenced by DEFENDANT's business records and witnessed by employees.

9 75. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
10 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
11 time they work, PLAINTIFF and the other members of the CALIFORNIA CLASS have
12 suffered and will continue to suffer an economic injury in amounts which are presently
13 unknown to them and which will be ascertained according to proof at trial.

14 76. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA CLASS are under compensated for their time worked.
16 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
17 employees for their labor as a matter of company policy, practice and procedure, and
18 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
19 of the CALIFORNIA CLASS the correct reporting time pay and minimum wages for their time
20 worked.

21 77. In performing the acts and practices herein alleged in violation of California labor
22 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time
23 worked and provide them with the requisite compensation, DEFENDANT acted and continues
24 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members
25 of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
26 consequences to them, and with the despicable intent of depriving them of their property and
27 legal rights, and otherwise causing them injury in order to increase company profits at the
28 expense of these employees.

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

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code § 510]

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

79. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

80. PLAINTIFF and the other members of the CALIFORNIA 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 pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

81. 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.

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

83. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including reporting time pay and minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the

1 employment of an employee for longer hours than those fixed by the Industrial Welfare
2 Commission is unlawful.

3 84. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and CALIFORNIA
4 CLASS Members are required, permitted or suffered by DEFENDANT to work for
5 DEFENDANT and are not paid for all the time they work, including overtime work.

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

13 86. In committing these violations of the California Labor Code, DEFENDANT
14 inaccurately records overtime worked and consequently underpays the overtime worked by
15 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
16 attempt to avoid the payment of all earned wages, and other benefits in violation of the
17 California Labor Code, the Industrial Welfare Commission requirements and other applicable
18 laws and regulations.

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

23 88. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
24 the PLAINTIFF and the other members of the CALIFORNIA CLASS are not receiving full
25 compensation for overtime worked.

26 89. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to the
28 PLAINTIFF and the other members of the CALIFORNIA CLASS . Further, PLAINTIFF and

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

6 90. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and the other
7 members of the CALIFORNIA CLASS are paid less for overtime worked that they are entitled
8 to, constituting a failure to pay all earned wages.

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

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

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

26 94. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
28 worked and provide them with the requisite overtime compensation, DEFENDANT acted and

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

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

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

20 97. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
21 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS
22 Members as required by the applicable Wage Order and Labor Code. The nature of the work
23 performed by PLAINTIFF and CALIFORNIA CLASS MEMBERS does not prevent these
24 employees from being relieved of all of their duties for the legally required off-duty meal
25 periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
26 CLASS Members are from time to time not fully relieved of duty by DEFENDANT for their
27 meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the
28 CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th)

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

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

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

15
16 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

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

22 (1) gross wages earned,

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

27 (3) the number of piecerate units earned and any applicable piece rate if the employee
28

1 is paid on a piece-rate basis,

2 (4) all deductions, provided that all deductions made on written orders of the employee
3 may be aggregated and shown as one item,

4 (5) net wages earned,

5 (6) the inclusive dates of the period for which the employee is paid,

6 (7) the name of the employee and his or her social security number, except that by
7 January 1, 2008, only the last four digits of his or her social security number or an
8 employee identification number other than a social security number may be shown on
9 the itemized statement,

10 (8) the name and address of the legal entity that is the employer, and

11 (9) all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each hourly rate by the employee.

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

1 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
2 wage statements which violated Cal. Lab. Code § 226.

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

14
15 **SEVENTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

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

19 **EIGHTH CAUSE OF ACTION**

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

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

22 **(By PLAINTIFF and the CALIFORNIA CLASS**

23 **and Against All Defendants)**

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

27 113. Cal. Lab. Code § 200 provides, in relevant part, that:
28

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.

114. 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."

115. 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.

116. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

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

118. The employment of PLAINTIFF and many CALIFORNIA CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

119. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has terminated and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all employees who

1 terminated employment during the CALIFORNIA CLASS PERIOD and demands an
2 accounting and payment of all wages due, plus interest and statutory costs as allowed by
3 law.

4
5 **NINTH CAUSE OF ACTION**

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

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

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

9 120. PLAINTIFF realleges and incorporates by this reference, as though fully set
10 forth herein, the prior paragraphs of this Complaint.

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

21 122. PLAINTIFF, and such persons that may be added from time to time who
22 satisfy the requirements and exhaust the administrative procedures under the Private
23 Attorney General Act, brings this Representative Action on behalf of the State of California
24 with respect to himself and all individuals who are or previously were employed by Beccan
25 Health LLC and/or Serrano Post Acute, LLC, and/or Corona Post Acute, LLC and/or California
26 Post Acute LLC and/or La Fuente Care Post Acute LLC and/or Monrovia Post Acute, LLC and/or
27 Royal Gardens Healthcare, LLC in California and who were classified as non exempt
28 employees ("AGGRIEVED EMPLOYEES") during the time period of period of time from

1 March 5, 2020 through September 22, 2022(the "PAGA PERIOD").

2 123. On March 5, 2021, PLAINTIFF gave written notice by electronic mail to the
3 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
4 employer of the specific provisions of this code alleged to have been violated as required by
5 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
6 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
7 now commence a representative civil action under PAGA pursuant to Section 2699 as the
8 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
9 defined.

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

24
25
26
27
28 ¹ Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS :

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA CLASS , during the applicable CALIFORNIA 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 CLASS for each violation in a subsequent pay period, not

1 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award
2 of costs for violation of Cal. Lab. Code § 226;

3 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
4 CLASS incurred in the course of their job duties, plus interest, and costs of suit;
5 and,

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

9 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

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

12 4. On all claims:

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

14 B) Such other and further relief as the Court deems just and equitable; and,

15 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
16 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
17 §2802.

18
19 Dated: December 8, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
20

21
22 By: 
23 Norman B. Blumenthal
24 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: December 8, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff