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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

MANUEL FRANCO and ALFONSO GUZMAN,
on behalf of themselves, on behalf of all persons
similarly situated, and on behalf of the State of
California as a private attorney general,

Plaintiffs,

vs.

STATES LOGISTICS SERVICES, INC., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 30-2022-01239095-CU-OE-CJC

**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 FOR ALL HOURS
WORKED, INCLUDING OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§ 218,
510, 558, 1194, 1197, 1197.1, 1198, 1199 *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 and COOL DOWN REST PERIODS IN
VIOLATION OF CAL. LAB. CODE §§ 226(a),
226.7, 512, 558, 1198, *ET. SEQ.*, AND THE
APPLICABLE IWC WAGE ORDERS;
6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION OF
CAL. LAB. CODE § 226(2), 226.3, 1174, 1174.5,
ET. SEQ.;
7. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 1198, 2802 *ET. SEQ.*;
8. FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE §§
201, 202, 203, 204(a) *ET. SEQ.*;
9. FAILURE TO PROVIDE PLACE OF
EMPLOYMENT THAT IS SAFE AND
HEALTHFUL IN VIOLATION OF LABOR
CODE 6400.6401, 6402, 6403, 6404, 6407 *ET.
SEQ.* CALIFORNIA CODE OF REGULATIONS,
TITLE 8, 3202;
10. FAILURE TO PROVIDE SAFE WORKING
CONDITIONS IN VIOLATION OF LABOR
CODE § 1198, and the Applicable WAGE
ORDER; and
11. CIVIL PENALTIES PURSUANT TO LABOR
CODE § 2699, *ET. SEQ.* FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 203, 204 *ET. SEQ.*,
210, 221, 226(a), 226.7, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
2698, 2699, CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11040,
SUBDIVISION 5(A)-(B)
DEMAND FOR A JURY TRIAL

1 Plaintiffs Manuel Franco and Alfonso Guzman (“PLAINTIFFS”) individuals, on behalf
2 of themselves and all other similarly situated current and former employees, and on behalf of
3 the people of the State of California and as an “aggrieved employees” acting as a private
4 attorney general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.*
5 (“PAGA”) allege on information and belief, except for their own acts and knowledge which
6 are based on personal knowledge, the following:

7
8 **THE PARTIES**

9 1. Defendant States Logistics Services, Inc. (“DEFENDANT”) is a California
10 corporation that at all relevant times mentioned herein conducted and continues to conduct
11 substantial business in the state of California.

12 2. DEFENDANT is a logistics company providing warehousing, transportation,
13 packaging & value added services in Southern California.

14 3. Plaintiff Manuel Franco was employed by DEFENDANT from July of 2011 to
15 January 14, 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
16 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
17 of minimum and overtime wages due for all time worked. Plaintiff Alfonso Guzman is a
18 resident of the State of California and was employed as an hourly, nonexempt employee of
19 Defendants until January of 2021.

20 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California
21 class, defined as all individuals who are or previously were employed by DEFENDANT, who
22 were classified as non-exempt in the State of California (the “CALIFORNIA CLASS”) from
23 May 2, 2020 to the earlier of preliminary approval or July 20, 2024 (the “CALIFORNIA
24 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
25 CLASS Members is under five million dollars (\$5,000,000.00).

26 5. PLAINTIFFS bring this Class Action on behalf of themselves and a
27 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
28 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and

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

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

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

26 **THE CONDUCT**

27 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
28 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,

1 meaning the time during which an employee is subject to the control of an employer, including
2 all the time the employee is suffered or permitted to work. DEFENDANT required
3 PLAINTIFFS and CALIFORNIA CLASS Members to work from time to time while they were
4 clocked out for what was supposed to be their off duty meal break. DEFENDANT required
5 PLAINTIFFS and the CALIFORNIA CLASS Members to work off the clock without paying
6 them for all the time they performed duties while on their meal break, specifically by failing to
7 provide enough labor hours to accomplish all the job tasks that DEFENDANT expected
8 PLAINTIFFS and CALIFORNIA CLASS Members to complete on a daily and/or weekly basis.
9 Further, PLAINTIFFS and other members of the CALIFORNIA CLASS from time to time were
10 not paid wages for all time worked, including overtime wages, such that in the aggregate
11 employees were underpaid wages as a result of DEFENDANT's pattern and practice of
12 unevenly rounding time worked by its employees. As a result, PLAINTIFFS and other
13 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by from
14 time to time working without their time being accurately recorded and without compensation
15 at the applicable minimum wage and overtime rates. DEFENDANT's policy and practice not
16 to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is
17 evidenced by DEFENDANT's business records.

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

28 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other

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

23 11. State law provides that employees must be paid overtime at one-and-one-half
24 times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members
25 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
26 employee's performance.

27 12. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
28 Members' compensation was DEFENDANT's non-discretionary incentive program that paid

1 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
2 performance for DEFENDANT. The non-discretionary incentive program provided all
3 employees paid on an hourly basis with incentive compensation when the employees met the
4 various performance goals set by DEFENDANT. However, when calculating the regular rate
5 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,
6 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
7 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
8 the incentive program to potential and new employees as part of the compensation package. As
9 a matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA
10 CLASS Members must be included in the "regular rate of pay." The failure to do so has
11 resulted in an underpayment of overtime compensation to PLAINTIFFS and other
12 CALIFORNIA CLASS Members by DEFENDANT.

13 13. DEFENDANT also failed to provide PLAINTIFFS 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. Specifically, DEFENDANT violated Cal. Lab. Code Section 226(a)(6) by failing
20 to correctly list the inclusive dates for the "Gross Up Pay" payments which were wage
21 payments. Defendant also violated Cal. Lab. Code Section 226(a)(9) by failing to identify the
22 correct rates of pay and number of hours worked including for the "Gross Up Pay" item of pay,
23 which was a wage payment. Aside, from the violations listed above, DEFENDANT failed to
24 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
25 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
26 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements
27 which violated Cal. Lab. Code § 226.

28 14. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any

1 employment are due and payable twice during each calendar month, on days designated in
2 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
3 requires employers to pay employees all wages owed within seven (7) days of the close of the
4 payroll period. DEFENDANT from time to time failed to pay PLAINTIFFS and other
5 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
6 the payroll period, including but not limited to for the “Gross Up Pay” wage payments.

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

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

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

1 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
2 directions of the employer, even though unlawful, unless the employee, at the time of obeying
3 the directions, believed them to be unlawful."

4 18. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
5 Members as a business expense, were required by DEFENDANT to use their own personal
6 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
7 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
8 cost associated with the use of their personal cellular phones and personal vehicles for
9 DEFENDANT's benefit. Specifically, in part, PLAINTIFFS and other CALIFORNIA CLASS
10 Members were required by DEFENDANT to use their personal cellular phones to respond to
11 managers while off the clock (which also results in minimum wage and overtime violations).
12 PLAINTIFFS and aggrieved employees would use their cell phones as a calculator for necessary
13 work duties. Calculators were not made available to them even though they were needed.
14 PLAINTIFFS and aggrieved employees had no choice but to use their cell phones during work
15 for work related activities. As a result, in the course of their employment with DEFENDANT,
16 PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed business
17 expenses which included, but were not limited to, costs related to the use of their personal
18 cellular phones all on behalf of and for the benefit of DEFENDANT. In addition, from time-to-
19 time PLAINTIFFS and aggrieved employees would be required to travel from worksite to
20 worksite during one shift. In order to do this, they were forced to use their own means of
21 transportation to get from one site to another. PLAINTIFFS and aggrieved employees were not
22 compensated for the use of their personal means of transportation that was used for work
23 purposes. Also, Defendants did not provide mandatory masks for Plaintiff and aggrieved
24 employees to wear during work. Plaintiff and aggrieved employees were expected to provide
25 their own masks and were only compensated \$10 for doing so. \$10 was not adequate to cover
26 the costs of Plaintiff Guzman providing his own masks, which were mandatory in the
27 workplace. PLAINTIFFS and aggrieved employees were forced to use their cell phones and
28 their personal means of transportation for work purposes and they were forced to provide their

own masks to wear at work, but Defendants failed to adequately reimburse PLAINTIFFS and employees for this use as required by the Labor Code. Accordingly, Defendants are liable for civil penalties under PAGA §2699 *et seq.*

19. Defendants' workplaces would get unsafely hot in the summer and extremely cold in the winter. In many instances, Plaintiff and aggrieved employees are required to work in enclosed spaces where there is inadequate heating, cooling and ventilation.

20. Defendants do not have proper climate control. Plaintiff and their coworkers worked in unbearable heat and humidity in the summer, and extreme cold during the winter.

21. Wage Order 9 15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

22. In addition to climate control issues, Defendants failed to take safety measures required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Defendants are liable for civil penalties pursuant to §2698 *et. seq.*

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

1 24. PLAINTIFFS and aggrieved employees, directly after the onset of COVID were
2 required to partake in tool assignments to eliminate possible cross contamination of work items,
3 but those activities were not enforced or practiced quickly after the onset of COVID and when
4 COVID was still a health risk to the employees. PLAINTIFFS and aggrieved employees
5 constantly had their assigned work tools taken from them and used by others, causing cross
6 contamination throughout the workplace, yet Defendants did nothing to maintain compliance of
7 the tool assignment policy. Plaintiff Guzman did contract COVID at work due to such cross
8 contamination and Defendants' lack of managing compliance of COVID safety precautions.
9 Ultimately, the tools and machinery were not adequately sanitized by Defendants. In addition,
10 Defendants did not provide masks for Plaintiff and aggrieved employees to wear in the
11 workplace and failed to adequately reimburse them for providing their own masks. Also,
12 Defendants oftentimes failed to provide soap in the restrooms so that Plaintiff and aggrieved
13 employees could adequately sanitize their hands before going back to work and using work tools
14 that were then passed around and shared. As a result of these practices, Defendants have
15 violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe
16 and healthful environment for their Employees, as outlined above. Defendants are liable for civil
17 penalties pursuant to Cal. Labor Code §2699 et seq.

18 25. 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.

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

JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

29. PLAINTIFFS bring 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 DEFENDANT, who were classified as non-exempt in the State of California (the "CALIFORNIA CLASS") from May 2, 2020 to the earlier of preliminary approval or July 20, 2024 (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).

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

31. 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.

32. 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.

1 33. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 34. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
4 law by:

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

19 35. 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 CLASS
26 will apply to every member of the CALIFORNIA CLASS;
- 27 (c) The claims of the representative PLAINTIFFS are typical of the claims of
28 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the

1 other members of the CALIFORNIA CLASS, is classified as a non-exempt
2 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 PLAINTIFFS and CALIFORNIA
6 CLASS. PLAINTIFFS sustained economic injury as a result of
7 DEFENDANT's employment practices. PLAINTIFFS and the members
8 of the CALIFORNIA CLASS were and are similarly or identically harmed
9 by the same unlawful, deceptive and unfair misconduct engaged in by
10 DEFENDANT; and,

- 11 (d) The representative PLAINTIFFS will fairly and adequately represent and
12 protect the interest of the CALIFORNIA CLASS, and has retained counsel
13 who are competent and experienced in Class Action litigation. There are
14 no material conflicts between the claims of the representative
15 PLAINTIFFS 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 36. 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 protect
5 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 as
9 a whole in that DEFENDANT failed to pay all wages due to members of
10 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 PLAINTIFFS 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 affecting
22 only individual CALIFORNIA CLASS Members, and a Class Action is
23 superior to other available methods for the fair and efficient adjudication
24 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 and
22 efficient adjudication of this litigation because class treatment will
23 obviate the need for unduly and unnecessary duplicative litigation
24 that is likely to result in the absence of certification of this action
25 pursuant to Cal. Code of Civ. Proc. § 382.

26 37. 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 asserting
8 their rights individually out of fear of retaliation or adverse impact on their
9 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) PLAINTIFFS, 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 the
23 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 related
3 claims arising out of the conduct of DEFENDANT as to the members of
4 the CALIFORNIA CLASS.

5 38. 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. PLAINTIFFS 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 **THE CALIFORNIA LABOR SUB-CLASS**

11 39. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
12 Eighth Causes of Action on behalf of a California sub-class, defined as all individuals who are
13 or previously were employed by DEFENDANT, who were classified as non-exempt in the State
14 of California (the "CALIFORNIA LABOR SUB-CLASS") from May 2, 2020 to the earlier of
15 preliminary approval or July 20, 2024 (the "CALIFORNIA LABOR SUB-CLASS PERIOD")
16 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim
17 of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

18 40. DEFENDANT, as a matter of company policy, practice and procedure, and in
19 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
20 requirements, and the applicable provisions of California law, intentionally, knowingly, and
21 wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation
22 for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR
23 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT
24 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
25 to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS
26 Members wages to which these employees are entitled in order to unfairly cheat the competition
27 and unlawfully profit. To the extent equitable tolling operates to toll claims by the
28 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-

1 CLASS PERIOD should be adjusted accordingly.

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

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

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

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

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

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

45. 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;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS,

1 like all the other members of the CALIFORNIA LABOR SUB-CLASS, is
2 a non-exempt employee paid on an hourly basis who has been subjected to
3 the DEFENDANT's practice and policy which fails to pay the correct
4 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
5 PLAINTIFFS sustained economic injury as a result of DEFENDANT's
6 employment practices. PLAINTIFFS and the members of the
7 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
8 harmed by the same unlawful, deceptive and unfair misconduct engaged in
9 by DEFENDANT; and,

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

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

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

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

CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to

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

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

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

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

- 22 (a) The questions of law and fact common to the CALIFORNIA LABOR
23 SUB-CLASS predominate over any question affecting only individual
24 CALIFORNIA LABOR SUB-CLASS Members;
25 (b) A Class Action is superior to any other available method for the fair and
26 efficient adjudication of the claims of the members of the CALIFORNIA
27 LABOR SUB-CLASS because in the context of employment litigation a
28 substantial number of individual CALIFORNIA LABOR SUB-CLASS

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

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

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

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

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

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

21 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANT. The
23 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
24 CLASS Members who worked for DEFENDANT in California at any time
25 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

26 (i) Class treatment provides manageable judicial treatment calculated to bring
27 a efficient and rapid conclusion to all litigation of all wage and hour related
28 claims arising out of the conduct of DEFENDANT as to the members of

1 the CALIFORNIA LABOR SUB-CLASS.

2
3 **FIRST CAUSE OF ACTION**

4 **For Unlawful Business Practices**

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

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

7 48. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
8 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
9 Complaint.

10 49. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
11 § 17021.

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

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

23
24 Cal. Bus. & Prof. Code § 17203.

25
26 51. By the conduct alleged herein, DEFENDANT has engaged and continues to
27 engage in a business practice which violates California law, including but not limited to, the
28 applicable Industrial Wage Order(s), the California Code of Regulations and the California

1 Labor Code including Sections 204, 210, 218, 221, 226.7, 246, 248.5, 510, 512, 558, 1194, 1197,
2 1197.1, 1198, 1199, 2802, 2899 and the Fair Labor Standards Act and federal regulations
3 promulgated thereunder, for which this Court should issue declaratory and other equitable relief
4 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
5 conduct held to constitute unfair competition, including restitution of wages wrongfully
6 withheld.

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

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

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

26 55. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
27 and deceptive in that DEFENDANT's policies, practices and procedures fail to provide all
28 legally required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA

1 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

1 engaging in any unlawful and unfair business practices in the future.

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

9 **SECOND CAUSE OF ACTION**

10 **For Failure To Pay Minimum Wages**

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

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

13 **and Against All Defendants)**

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

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

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

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

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

1 with the costs of suit.

2 68. 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 69. DEFENDANT's pattern of unlawful wage and hour practices manifested, without
8 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
9 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the
10 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

11 70. 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 71. 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 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
22 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked that
23 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 DEFENDANT
28 fails to accurately record and pay as evidenced by DEFENDANT's business records and

1 witnessed by employees.

2 73. 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 74. 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 75. 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 76. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
24 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
25 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
26 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other
27 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

28 ///

1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay for All Hours Worked, Including Overtime Hours Worked**

3 **[Cal. Lab. Code §§ 218, 510, 558, 1194, 1197, 1197.1, 1198, 1199 *et seq.*]**

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

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

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

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

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

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

25 82. 17. Section 2(H) or Wage Order 9 "hours worked" as "the time during which an
26 employee is subject to the control of an employer, and including all the time the employee is
27 suffered or permitted to work, whether or not required to do so."

28 83. PLAINTIFFS and aggrieved employees were not paid for all hours worked,

1 including overtime hours worked because of Defendants' policy of conducting required work
2 activities off the clock and because employees were forced to wait in long lines in order to clock
3 in for work. Defendants also failed to reimburse employees for required personal cell phone and
4 automobile use.

5 84. Defendants have been engaged in many unlawful employment practices which
6 resulted in underpayment for hours worked each pay period, including overtime hours worked,
7 as more fully set forth below:

8 85. Pre-Shift Work and Off-the-Clock Required Duties. PLAINTIFFS and aggrieved
9 employees frequently worked off the clock and were routinely subjected to periods wherein they
10 were under the employer's control but not compensated for their time.

11 86. At the beginning of the shift, when PLAINTIFFS and aggrieved employees arrived
12 at work, they are required to engage in temperature checks prior to clocking in. This process
13 takes 3-5 minutes daily. In addition, PLAINTIFFS and aggrieved employees had to wait in line
14 in order to clock in, which took 1-2 minutes every work shift. PLAINTIFFS and aggrieved
15 employees were not paid for time spent getting temperature checks done or waiting in line off
16 the clock.

17 87. This resulted in many unpaid hours worked for all aggrieved employees required
18 to communicate regarding work matters with their employer while off the clock. Defendant has
19 violated Labor Code §§510 1194, and 1198, and Wage Order 9..

20 88. Failure to Pay Wages- Required Minimum Wage. Defendant failed to pay
21 PLAINTIFFS and aggrieved employees for all hours worked as a result of Defendant's timecard
22 rounding and time shaving practices, as well as Defendant's practice of requiring employees to
23 communicate via phone and text with Employers while employees were off the clock. Based on
24 Defendant's unlawful conduct described above, and because PLAINTIFFS and the aggrieved
25 employees were paid at or near minimum wage, Defendant's failure to pay for all hours worked,
26 including overtime, resulted in a payment of less than the minimum wage for all hours worked,
27 in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 9-2001.

28 89. Off-the-Clock Hours Worked. PLAINTIFFS and aggrieved employees frequently

1 worked 10-12 hours per shift, and sometimes more wherein they were under the Employer's
2 control but not compensated for all of their time. PLAINTIFFS and aggrieved employees were
3 not paid for all time worked, resulting in failure to pay wages, including overtime and minimum
4 wages. Defendants have violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage
5 Order 9.

6 90. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to
7 pay PLAINTIFFS and aggrieved employees all wages earned twice during each calendar month
8 pursuant to Labor Code §204(a). Defendants failed to pay all wages earned to employees as a
9 result of the unlawful employment policies and practices discussed herein. As a result of these
10 practices, employees were underpaid for hours worked, including overtime and penalty wages,
11 and this underpayment resulted in a failure to pay all wages owed twice per month.

12 91. Due to this failure, Defendants are liable under Labor Code §210 for failure to pay
13 wages as required by law.

14 92. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
15 CALIFORNIA LABOR SUB-CLASS Members are required, permitted or suffered by
16 DEFENDANT to work for DEFENDANT and are not paid for all the time they work, including
17 overtime work.

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

25 94. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately records overtime worked and consequently underpays the overtime worked by
27 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
28 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of

1 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
2 laws and regulations.

3 95. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
4 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
5 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
6 including overtime work.

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

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

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

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

28 100. By virtue of DEFENDANT's unlawful failure to accurately pay all earned

1 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
2 CLASS for the true amount of time they worked, PLAINTIFFS and the other members of the
3 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
4 injury in amounts which are presently unknown to them and which will be ascertained according
5 to proof at trial.

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

9 105. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
10 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR
11 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
12 of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS
13 does not prevent these employees from being relieved of all of their duties for the legally
14 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and
15 other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved
16 of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to
17 provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally
18 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
19 business records. Further, DEFENDANT fails to provide PLAINTIFFS and CALIFORNIA
20 CLASS Members with a second off-duty meal period in some workdays in which these
21 employees were required by DEFENDANT to work ten (10) hours of work. As a result,
22 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeit
23 meal breaks without additional compensation and in accordance with DEFENDANT's strict
24 corporate policy and practice.

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

workday that a meal period was not provided.

107. 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.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods and Cool-Down Rest Periods

[Cal. Lab. Code §§ 226(a), 226.7, 512, 558, 1198 *et. seq.*, Wage Order 9]

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

108. 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.

109. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are 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.

110. When rest breaks were taken, they were not compliant with California law. Employees, including Plaintiff, who worked in the warehouses were not provided with sufficient potable water or bathrooms or opportunities for cool down periods. Labor Code §226.7 requires that employers provide rest periods and cool down rest periods that comply with state laws, including those that require adequate restroom facilities and water to employees for use during required break and cool-down rest periods.

111. Defendants frowned upon and discouraged Plaintiff and aggrieved employees requests for cool down periods. During times when it became dangerously hot in the work areas and Plaintiff and aggrieved employees asked for a period of time to cool down, Defendants ignored their pleas for rest and cooling time and instead asked them to not take their requested time to recover because there was too much work to get done. When employees did receive rest breaks, they were not compliant for many reasons, including those set forth below.

112. Potable Drinking Water. Rest breaks did not comply with state laws as required by Labor Code §226.7 because employee were denied sufficient potable water. Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision of potable drinking water and single use cups. Plaintiff and aggrieved employees were not provided with adequate potable drinking water, as it was delivered on pallets and sat in the warehouse becoming unreasonably hot and unpotable due to scorching temperatures reached inside.

113. Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.”

114. Labor Code 226.7 requires compliant breaks, and employees may recover PAGA penalties for violation of 226.7.

115. Legally Compliant Bathrooms. Rest breaks did not comply with state laws as required by Labor Code §226.7 because workers were not provided with clean bathrooms and sufficient handwashing facilities and Plaintiff and aggrieved employees had to deal with a lack of soap being available much of the time, to all those needing to sanitize their hands after using the restroom or simply to keep safe from COVID and other illnesses.

116. California Labor Code §2350 requires employers to provides that “[e]very factory, workshop, mercantile or other establishment in which one or more persons are employed, shall

1 be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be
2 provided, within reasonable access, with a sufficient number of toilet facilities for the use of the
3 employees.” Defendant violated §2350 by failing to provide and maintain sanitary bathrooms
4 for employees. Defendant further violated 8 CCR §3457(c) by failing to provide adequate toilet
5 and handwashing facilities.

6 117. Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times,
7 operational, maintained in a clean and sanitary condition, and kept in good repair. Written
8 records of service and maintenance shall be maintained and retained for two years.” Labor Code
9 §6712 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in
10 good repair at all times, including written records of that service and maintenance.” Moreover,
11 “any employer who fails to provide the facilities required by the field sanitation standard shall
12 be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each
13 violation.” Labor Code §6712. Further, the public policy of the State of California as codified,
14 expressed and mandated in Labor Code sections 6300, 6310 and 6400, et seq. requires all
15 employers to take reasonable steps to provide a safe and secure workplace. Unfortunately,
16 bathrooms in Employer’s workplaces were filthy, unsanitary, and non-compliant with minimum
17 standards.

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

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

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1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

9 121. Cal. Labor Code § 226 provides that an employer must furnish employees with
10 an “accurate itemized” statement in writing showing:

11 (1) gross wages earned,

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

16 (3) the number of piece-rate units earned and any applicable piece rate if the employee is
17 paid on a piece-rate basis,

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

20 (5) net wages earned,

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

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

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

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

1 122. DEFENDANT also fails to provide PLAINTIFFS and the other members of the
2 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed
3 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
4 provides that every employer shall furnish each of his or her employees with an accurate
5 itemized wage statement in writing showing, among other things, gross wages earned and all
6 applicable hourly rates in effect during the pay period and the corresponding amount of time
7 worked at each hourly rate. Specifically, DEFENDANT violated Cal. Lab. Code Section
8 226(a)(6) by failing to correctly list the inclusive dates for the “Gross Up Pay” payments which
9 were wage payments. Defendant also violated Cal. Lab. Code Section 226(a)(9) by failing to
10 identify the correct rates of pay and number of hours worked including for the “Gross Up Pay”
11 item of pay, which was a wage payment. Aside, from the violations listed above, DEFENDANT
12 failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
13 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
14 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with wage
15 statements which violated Cal. Lab. Code § 226.

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

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1 waiver of this expectation. Although these expenses are necessary expenses incurred by
2 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT fails to
3 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members
4 for these expenses as an employer is required to do under the laws and regulations of California.

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

9 **EIGHTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code §§ 201, 202, 203, 204(a) *et. seq.*]**

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

13 **and Against All Defendants)**

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

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

18 As used in this article:

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

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

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

1 immediately.”

2 131. Cal. Lab. Code § 202 provides, in relevant part, that:

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

13
14 132. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

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

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

23
24 134. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS
25 Members has terminated and DEFENDANT has not tendered payment of all wages owed as
26 required by law. Additionally, Plaintiff Manuel Franco was terminated by DEFENDANT on
27 January 14, 2021 and DEFENDANT did not send PLAINTIFFS his final wages until January
28 19, 2021 in violation of Cal. Lab. Code Section 203.

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

7 **NINTH CAUSE OF ACTION**

8 **[Cal. Lab. Code. 1198, Wage Order 9]**

9 **[CAL §1198, WAGE ORDER 9]**

10 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**
11 **and Against All Defendant)**

12 136. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 137. Defendants' workplaces would get unsafely hot in the summer and extremely cold
15 in the winter. In many instances, Plaintiff and aggrieved employees are required to work in
16 enclosed spaces where there is inadequate heating, cooling and ventilation.

17 138. Defendants do not have proper climate control. Plaintiff and their coworkers
18 worked in unbearable heat and humidity in the summer, and extreme cold during the winter.

19 139. Wage Order 9 15 requires:

20 (A) The temperature maintained in each work area shall provide reasonable
21 comfort consistent with industry-wide standards for the nature of the process and
22 the work performed.

23 (B) If excessive heat or humidity is created by the work process, the employer
24 shall take all feasible means to reduce such excessive heat or humidity to a degree
25 providing reasonable comfort.

26 140. In addition to climate control issues, Defendants failed to take safety measures
27 required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to
28 employ employee in conditions prohibited by the wage order.

1 **TENTH CAUSE OF ACTION**

2 **Failure to Provide Place of Employment That Is Safe And Healthful**

3 **(Cal. Labor Code §6400, 6401, 6402, 6403, 6404, 6407 et. seq., 8 CCR 3202)**

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

5 **and Against All Defendant)**

6 141. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 142. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment
9 and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code
10 §6401 provides that “every employer shall furnish and use safety devices and safeguards, and
11 shall adopt and use practices, means, methods, operations, and processes which are reasonably
12 adequate to render such employment and place of employment safe and healthful. Every
13 employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any
14 employee to go or be in any employment or place of employment which is not safe and healthful.
15 Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety
16 devices and safeguards reasonably adequate to render the employment and place of employment
17 safe, or to adopt and use methods and processes reasonably adequate to render the employment
18 and place of employment safe, or to do every other thing reasonably necessary to protect the life,
19 safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy
20 or maintain any place of employment that is not safe and healthful. Cal. Labor Code §
21 6407 provides that every employer and every employee shall comply with occupational safety
22 and health standards, with Section 25910 of the Health and Safety Code, and with all rules,
23 regulations, and orders pursuant to this division which are applicable to his own actions and
24 conduct.

25 143. Defendant failed to take precautions to ensure employee safety after the onset of
26 COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome
27 coronavirus 2 (SARS-CoV-2). Plaintiff and aggrieved employees, directly after the onset of
28 COVID were required to partake in tool assignments to eliminate possible cross contamination

1 of work items, but those activities were not enforced or practiced quickly after the onset of
2 COVID and when COVID was still a health risk to the employees. Plaintiff and aggrieved
3 employees constantly had their assigned work tools taken from them and used by others, causing
4 cross contamination throughout the workplace, yet Defendants did nothing to maintain
5 compliance of the tool assignment policy. Plaintiff did contract COVID at work due to such
6 cross contamination and Defendants' lack of managing compliance of COVID safety
7 precautions. Ultimately, the tools and machinery were not adequately sanitized by Defendants.
8 In addition, Defendants did not provide masks for Plaintiff and aggrieved employees to wear in
9 the workplace and failed to adequately reimburse them for providing their own masks. Also,
10 Defendants oftentimes failed to provide soap in the restrooms so that Plaintiff and aggrieved
11 employees could adequately sanitize their hands before going back to work and using work tools
12 that were then passed around and shared. As a result of these practices, Defendants have
13 violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe
14 and healthful environment for their Employees, as outlined above.

15 **ELEVENTH CAUSE OF ACTION**

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

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

18 **(By PLAINTIFFS and Against All Defendants)**

19 144. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
20 herein, the prior paragraphs of this Complaint.

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

1 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
2 arbitration.

3 146. PLAINTIFFS, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, brings this Representative Action on behalf of the State of California with respect to himself
6 and all non-exempt employees who worked for Defendant in the State of California
7 ("AGGRIEVED EMPLOYEES") from July 6, 2020 to the earlier of preliminary approval or July
8 20, 2024, (the "PAGA PERIOD").

9 147. On April 29, 2021, Plaintiff Manuel Franco gave written notice by electronic mail
10 to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
11 employer of the specific provisions of this code alleged to have been violated as required by
12 Labor Code § 2699.3. Plaintiff Guzman has also complied with all procedural requirements of
13 Labor Code § 2699.3 prior to filing this complaint. The statutory waiting period for
14 PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to
15 Section 2699.3, PLAINTIFFS may now commence a representative civil action under PAGA
16 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
17 EMPLOYEES as herein defined.

18 148. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other
20 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
21 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
22 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
23 expenses, and (f) failed to pay wages when due, all in violation of the applicable Labor Code
24 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.3, 226.7,
25 351, 510, 512, 518, 558(a)(1)(2), 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2698, 2699,
26 2802, 6400, 6401, 6402, 6403, 6407, California Code of Regulations, Title 8, Sections 11040,
27 Subdivision 5(A)-(B) and 3202, and the applicable Wage Order(s), and thereby gives rise to civil
28

1 penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of only civil penalties
2 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
3 the State of California for the illegal conduct perpetrated on PLAINTIFFS and the other
4 AGGRIEVED EMPLOYEES.

5 149. All of the conduct and violations alleged herein occurred during the PAGA
6 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
7 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
8 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
9 AJDAR 12157 (Certified for Publication 12/19/18).

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFFS prays for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

25 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
26

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

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
2 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
3 action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFFS and the
6 other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
7 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
8 statutory rate;
- 9 C) Meal and rest period compensation pursuant to California Labor Code Section
10 226.7 and the applicable IWC Wage Order;
- 11 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 12 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
13 which a violation occurs and one hundred dollars (\$100) per each member of the
14 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
15 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
16 an award of costs for violation of Cal. Lab. Code § 226;
- 17 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
18 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
19 costs of suit; and,
- 20 G) The wages of all terminated employees in the CALIFORNIA LABOR
21 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
22 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 23 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 24 A) Recovery of civil penalties as prescribed by the Labor Code Private
25 Attorneys General Act of 2004; and,
- 26 B) An award of attorneys' fees and cost of suit, as allowable under the
27 law, including, but not limited to, pursuant to Labor Code §2699.
- 28 4. On all claims:

- 1 A) An award of interest, including prejudgment interest at the legal rate;
2 B) Such other and further relief as the Court deems just and equitable; and,
3 C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law,
4 including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

5
6 Dated: July 24, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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8
9 By: /s/ Nicholas J. De Blouw

10 Norman B. Blumenthal
11 Nicholas J. De Blouw
12 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: July 24, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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