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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

NOV 08 2022


BY: Samantha Becerra, Deputy

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

13 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

14 KEELAIN GONZALEZ, on behalf of himself
15 and on behalf of all persons similarly situated,
16 and on behalf of the State of California, as a
17 private attorney general,

18 Plaintiff,

19 vs.

20 PACIFIC WESTERN BANK, a California
21 Corporation; DOES 1 through 50, inclusive,

22 Defendants.

Lead Case No. **CIVSB2127657**

[Related Case: CIVSB2127696]

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

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT provides comprehensive community banking, national lending and
10 venture banking services.

11 3. PLAINTIFF was employed by DEFENDANT from November of 2014 to June
12 of 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
13 an hourly basis, and entitled to the legally required meal and rest periods and payment of
14 minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by Defendant in California who
17 were classified as hourly, non-exempt employees (the “CALIFORNIA CLASS”) during the
18 period October 1, 2018 through the earlier of the date of an order approving Plaintiff’s motion
19 for preliminary approval or November 3, 3022 (the “CALIFORNIA CLASS PERIOD”). The
20 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
21 million dollars (\$5,000,000.00).

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

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

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

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

22 23 **THE CONDUCT**

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
28 and CALIFORNIA CLASS Members to work from time to time while they were clocked out

1 for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF
2 and the CALIFORNIA CLASS Members to work off the clock without paying them for all the
3 time they performed duties while on their meal break, specifically by failing to provide enough
4 labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and
5 CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. PLAINTIFF and
6 CALIFORNIA CLASS Members also worked off the clock with respect to time spent
7 undergoing mandatory drug testing or any other testing and/or examination required as a
8 condition of employment. Additionally, DEFENDANT engaged in the practice of requiring
9 PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clock in that
10 DEFENDANT, as a condition of employment, required these employees to complete mandatory
11 COVID-19 screening questions on their personal cell phones prior to clocking into
12 DEFENDANT's timekeeping system for the workday. Further, PLAINTIFF and other members
13 of the CALIFORNIA CLASS from time to time were not paid wages for all time worked,
14 including overtime wages, such that in the aggregate employees were underpaid wages as a
15 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
16 employees. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
17 minimum wage and overtime compensation by from time to time working without their time
18 being accurately recorded and without compensation at the applicable minimum wage and
19 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
20 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
21 records.

22 9. As a result of their rigorous work schedules, PLAINTIFF and other
23 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
24 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
25 CALIFORNIA CLASS Members were from time to time required to perform work as ordered
26 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
27 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
28 Members with a second off-duty meal period from time to time in which these employees were

1 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
2 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
3 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

1 11. State law provides that employees must be paid overtime and meal and rest break
2 premium pay at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
3 CALIFORNIA CLASS Members were compensated at an hourly rate plus incentive pay that
4 was tied to specific elements of an employee’s performance.

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

20 13. DEFENDANT also failed to provide PLAINTIFF and the other members of the
21 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
22 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
23 every employer shall furnish each of his or her employees with an accurate itemized wage
24 statement in writing showing, among other things, gross wages earned and all applicable hourly
25 rates in effect during the pay period and the corresponding amount of time worked at each
26 hourly rate. PLAINTIFF and CALIFORNIA CLASS Members were paid on an hourly basis.
27 As such, the wage statements should reflect all applicable hourly rates during the pay period and
28 the total hours worked, and the applicable pay period in which the wages were earned pursuant

1 to California Labor Code Section 226(a). The wage statements DEFENDANT provided to
2 PLAINTIFF and other CALIFORNIA CLASS Members failed to identify such information.
3 More specifically, the wage statements failed to identify the accurate total hours worked each
4 pay period. When the hours shown on the wage statements were added up, they did not equal
5 the actual total hours worked during the pay period in violation Cal. Lab. Code Section
6 226(a)(2). Additionally, DEFENDANT violated Section 226(a)(9) by failing to identify the
7 correct rates of pay and number of hours worked, including for the “CO Look Back,” item of
8 pay, which was a wage payment. Aside, from the violations listed above, DEFENDANT failed
9 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
10 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
11 PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which
12 violated Cal. Lab. Code § 226.

13 14. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
14 employment are due and payable twice during each calendar month, on days designated in
15 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
16 requires employers to pay employees all wages owed within seven (7) days of the close of the
17 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
18 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
19 the payroll period, including but not limited to for the “Gross Up Pay” wage payments.

20 15. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
21 to collect or receive from an employee any part of wages theretofore paid by said employer to
22 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
23 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
24 payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
25 all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA
26 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
27 each applicable pay period and upon termination. PLAINTIFF and members of the
28 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages

1 according to proof, related penalties, interest, attorney fees and costs.

2 16. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
3 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
4 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees regularly earn
5 non-discretionary remuneration. Rather than pay sick pay at the regular rate of pay,
6 DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS Members
7 at their base rates of pay.

8 17. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
9 employees be calculated by dividing the employee's total wages, not including overtime
10 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
11 of employment.

12 18. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
13 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
14 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
15 was paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA
16 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
17 Section 246.

18 19. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
19 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting
20 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
21 believes and based thereon alleges that such failure to pay sick pay at regular rate was willful,
22 such that PLAINTIFF and members of the CALIFORNIA CLASS whose employment has
23 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

24 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
25 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
26 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
27 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
28 2802, employers are required to indemnify employees for all expenses incurred in the course

1 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
2 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
3 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
4 directions of the employer, even though unlawful, unless the employee, at the time of obeying
5 the directions, believed them to be unlawful."

6 21. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
7 Members as a business expense, were required by DEFENDANT to use their own personal
8 cellular phones as a result of and in furtherance of their job duties as employees for
9 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
10 associated with the use of their personal cellular phones for DEFENDANT's benefit.
11 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
12 DEFENDANT to use their personal cellular phones to respond to managers while off the clock
13 (which also results in minimum wage and overtime violations) and also download an application
14 so that these employees could complete DEFENDANT's mandatory COVID-19 screening
15 questions prior to coming into work each day. As a result, in the course of their employment
16 with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
17 unreimbursed business expenses which included, but were not limited to, costs related to the use
18 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

28 23. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA

1 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
2 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by
3 engaging in a company-wide policy and procedure which fails to accurately calculate and record
4 all missed meal and rest periods and failed to pay all minimum and overtime wages due to
5 PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
6 employees’ missed meal and rest breaks is the DEFENDANT’s burden. As a result of
7 DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT fails
8 to properly calculate and/or pay all required compensation for work performed by the members
9 of the CALIFORNIA CLASS and violated the California Labor Code and regulations
10 promulgated thereunder as herein alleged.

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

27
28 **JURISDICTION AND VENUE**

25. 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 PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

26. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF 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

27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") 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 in California and classified as hourly, non-exempt employees (the "CALIFORNIA CLASS") during the period October 1, 2018 through November 3, 2022 (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).

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

29. 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

1 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT
2 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
3 to permit this work.

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

13 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
16 law by:

- 17 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
18 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
19 deceptively having in place company policies, practices and procedures
20 that failed to record and pay PLAINTIFF and the other members of the
21 CALIFORNIA CLASS for all time worked minimum wages owed and
22 overtime wages owed for work performed by these employees;
- 23 (b) Committing an act of unfair competition in violation of the UCL, by
24 failing to provide the PLAINTIFF and the other members of the
25 CALIFORNIA CLASS with the legally required meal and rest periods;
26 and,
- 27 (c) Committing an act of unfair competition in violation of the California
28 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by

1 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
2 the CALIFORNIA CLASS members with necessary expenses incurred in
3 the discharge of their job duties.

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

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

1 make class certification inappropriate. Counsel for the CALIFORNIA
2 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
3 Members.

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

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

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

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

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

24 1) With respect to the First Cause of Action, the final relief on behalf
25 of the CALIFORNIA CLASS sought does not relate exclusively to
26 restitution because through this claim PLAINTIFF seeks
27 declaratory relief holding that the DEFENDANT's policy and
28 practices constitute unfair competition, along with declaratory

1 relief, injunctive relief, and incidental equitable relief as may be
2 necessary to prevent and remedy the conduct declared to constitute
3 unfair competition;

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

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

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

19 A. Inconsistent or varying adjudications with respect to
20 individual members of the CALIFORNIA CLASS, which
21 would establish incompatible standards of conduct for the
22 DEFENDANT; and/or,

23 B. Adjudications with respect to individual members of the
24 CALIFORNIA CLASS would as a practical matter be
25 dispositive of the interests of the other members not parties
26 to the adjudication or substantially impair or impede their
27 ability to protect their interests;

28 3) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA CLASS Members will avoid asserting
2 their legal rights out of fear of retaliation by DEFENDANT, which
3 may adversely affect an individual's job with DEFENDANT or
4 with a subsequent employer, the Class Action is the only means to
5 assert their claims through a representative; and,

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

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

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

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations and
3 other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
10 to the CALIFORNIA CLASS, thereby making final class-wide relief
11 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 12 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
13 the business records of DEFENDANT; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to bring
15 a efficient and rapid conclusion to all litigation of all wage and hour
16 related claims arising out of the conduct of DEFENDANT as to the
17 members of the CALIFORNIA CLASS.

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

23 **THE CALIFORNIA LABOR SUB-CLASS**

24 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
25 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
26 CALIFORNIA CLASS who are or previously were employed DEFENDANT in California and
27 classified as hourly, non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS")
28 during the period October 1, 2018 through November 3, 2022 (the "CALIFORNIA LABOR

1 SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
2 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
3 dollars (\$5,000,000.00).

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

16 39. DEFENDANT maintains records from which the Court can ascertain and identify
17 by name and job title, each of DEFENDANT’s employees who have been intentionally
18 subjected to DEFENDANT’s company policy, practices and procedures as herein alleged.
19 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
20 similarly situated employees when they have been identified.

21 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
22 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 25 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
26 compensation due to members of the CALIFORNIA LABOR SUB-
27 CLASS for missed meal and rest breaks in violation of the California
28 Labor Code and California regulations and the applicable California Wage

Order;

- (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (e) Whether DEFENDANT's conduct was willful.

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

- (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF and

1 the CALIFORNIA LABOR SUB-CLASS members with necessary
2 expenses incurred in the discharge of their job duties.

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

5 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
6 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
7 Members is impracticable and the disposition of their claims as a class
8 will benefit the parties and the Court;

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

13 (c) The claims of the representative PLAINTIFF are typical of the claims of
14 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
15 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
16 is a non-exempt employee paid on an hourly basis who has been subjected
17 to the DEFENDANT's practice and policy which fails to pay the correct
18 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
19 PLAINTIFF sustained economic injury as a result of DEFENDANT's
20 employment practices. PLAINTIFF and the members of the
21 CALIFORNIA LABOR SUB-CLASS were and are similarly or
22 identically harmed by the same unlawful, deceptive, unfair and pervasive
23 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

1 representative; and,

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

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

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

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of
3 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally applicable
5 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
6 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
7 CLASS as a whole;
- 8 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
9 ascertainable from the business records of DEFENDANT. The
10 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
11 CLASS Members who worked for DEFENDANT in California at any
12 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to bring
14 a efficient and rapid conclusion to all litigation of all wage and hour
15 related claims arising out of the conduct of DEFENDANT as to the
16 members of the CALIFORNIA LABOR SUB-CLASS.

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

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

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

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

27 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

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

7 Cal. Bus. & Prof. Code § 17203.

8 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
9 engage in a business practice which violates California law, including but not limited to, the
10 applicable Industrial Wage Order(s), the California Code of Regulations and the California
11 Labor Code including Sections 204, 210, 221, 226.7, 246, 248.5, 510, 512, 1194, 1197, 1197.1,
12 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder,
13 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
14 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
15 unfair competition, including restitution of wages wrongfully withheld.

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

21 51. By the conduct alleged herein, DEFENDANT's practices are deceptive and
22 fraudulent in that DEFENDANT's policy and practice fails to provide the legally mandated
23 meal and rest periods, and the required amount of compensation for missed meal and rest
24 periods, reporting time pay, and overtime and minimum wages owed, and Fair Labor Standards
25 Act overtime wages due for overtime worked as a result of failing to include non-discretionary
26 incentive compensation into their regular rate for purposes of computing the proper overtime
27 pay, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
28 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§

1 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
2 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

25 57. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California
27 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
28 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business

1 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

18
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Minimum Wages**

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

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

23 **and Against All Defendants)**

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

27 62. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 bring a claim for DEFENDANT's willful and intentional violations of the California Labor

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
2 accurately calculate and pay reporting time and minimum wages to PLAINTIFF and
3 CALIFORNIA CLASS Members.

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

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

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

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

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

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

27 69. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive

1 the correct reporting time pay and minimum wage compensation for their time worked for
2 DEFENDANT.

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

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

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

24 73. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
26 all time worked and provide them with the requisite compensation, DEFENDANT acted and
27 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for

1 their legal rights, or the consequences to them, and with the despicable intent of depriving them
2 of their property and legal rights, and otherwise causing them injury in order to increase
3 company profits at the expense of these employees.

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

10
11 **THIRD CAUSE OF ACTION**

12 **For Failure To Pay Overtime Compensation**

13 **[Cal. Lab. Code § 510]**

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

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

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

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

27 78. Cal. Lab. Code § 510 further provides that employees in California shall not be
28 employed more than eight (8) hours per workday and more than forty (40) hours per workweek

1 unless they receive additional compensation beyond their regular wages in amounts specified
2 by law.

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

8 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
9 CALIFORNIA LABOR SUB-CLASS Members are required, permitted or suffered by
10 DEFENDANT to work for DEFENDANT and are not paid for all the time they work, including
11 overtime work.

12 81. DEFENDANT's unlawful wage and hour practices manifested, without
13 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
14 implementing a policy and practice that failed to accurately record overtime work by
15 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
16 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
17 CLASS for overtime work, including, the overtime work performed in excess of eight (8) hours
18 in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

19 82. In committing these violations of the California Labor Code, DEFENDANT
20 inaccurately records overtime worked and consequently underpays the overtime worked by
21 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
23 of the California Labor Code, the Industrial Welfare Commission requirements and other
24 applicable laws and regulations.

25 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
27 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
28 including overtime work.

1 84. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not
3 receiving full compensation for overtime worked.

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

12 86. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for overtime worked
14 that they are entitled to, constituting a failure to pay all earned wages.

15 87. DEFENDANT fails to accurately pay the PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
17 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
18 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS are required to work, and did in fact work, overtime as to which DEFENDANT fails
20 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed
21 by employees.

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

28 89. DEFENDANT knew or should have known that PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for all overtime
2 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
3 to not pay employees for their labor as a matter of company policy, practice and procedure, and
4 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

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

27 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
28

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

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

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

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FIFTH CAUSE OF ACTION

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For Failure to Provide Required Rest Periods

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[Cal. Lab. Code §§ 226.7 & 512]

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(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All

8

Defendants)

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96. PLAINTIFF, 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.

12

97. PLAINTIFF 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. PLAINTIFF 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, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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99. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according

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1 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
2 suit.

3
4 **SIXTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 226]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 100. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
10 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
11 of this Complaint.

12 101. Cal. Labor Code § 226 provides that an employer must furnish employees with
13 an “accurate itemized” statement in writing showing:

14 (1) gross wages earned,

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

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

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

23 (5) net wages earned,

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

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

1 (8) the name and address of the legal entity that is the employer, and
2 (9) all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 102. DEFENDANT also failed to provide PLAINTIFF and the other members of the
5 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed
6 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
7 provides that every employer shall furnish each of his or her employees with an accurate
8 itemized wage statement in writing showing, among other things, gross wages earned and all
9 applicable hourly rates in effect during the pay period and the corresponding amount of time
10 worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members
11 were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly
12 rates during the pay period and the total hours worked, and the applicable pay period in which
13 the wages were earned pursuant to California Labor Code Section 226(a). The wage statements
14 DEFENDANT provided to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
15 Members failed to identify such information. More specifically, the wage statements failed to
16 identify the accurate total hours worked each pay period. When the hours shown on the wage
17 statements were added up, they did not equal the actual total hours worked during the pay
18 period in violation Cal. Lab. Code Section 226(a)(2). Additionally, DEFENDANT violated
19 Section 226(a)(9) by failing to identify the correct rates of pay and number of hours worked,
20 including for the “CO Look Back,” item of pay, which was a wage payment. Aside, from the
21 violations listed above, DEFENDANT failed to issue to PLAINTIFF an itemized wage
22 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
23 DEFENDANT from time to time provided PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code §
25 226.

26 103. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code
27 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
28 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended

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

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10 **SEVENTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 2802]**

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

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

18 105. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

22 106. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
23 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
24 CLASS members for required expenses incurred in the discharge of their job duties for
25 DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFF and the
26 CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not
27 limited to, costs related to using their personal cellular phones and personal home offices all
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1 on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
2 CALIFORNIA LABOR SUB-CLASS Members are required by DEFENDANT to use their
3 personal cell phones to respond to work related issues. DEFENDANT's policy, practice and
4 procedure is to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 members for expenses resulting from using their personal cellular phones and home offices
6 for DEFENDANT within the course and scope of their employment for DEFENDANT.
7 These expenses are necessary to complete their principal job duties. DEFENDANT is
8 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although
9 these expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA
10 LABOR SUB-CLASS members, DEFENDANT fails to indemnify and reimburse
11 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as
12 an employer is required to do under the laws and regulations of California.

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

17 **EIGHTH CAUSE OF ACTION**

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

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

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
21 **and Against All Defendants)**

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

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

26 As used in this article:

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

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

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

8 111. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

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

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

28 114. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
owed as required by law.

115. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
of pay as penalty for not paying all wages due at time of termination for all employees who
terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
demands an accounting and payment of all wages due, plus interest and statutory costs as

1 allowed by law.

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5 **NINTH CAUSE OF ACTION**

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

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

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

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

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

21 118. PLAINTIFF, and such persons that may be added from time to time who
22 satisfy the requirements and exhaust the administrative procedures under the Private
23 Attorney General Act, brings this Representative Action on behalf of the State of California
24 with respect to himself and all hourly, non-exempt employees who were employed in
25 California ("AGGRIEVED EMPLOYEES") during the time period from July 26, 2020
26 through November 3, 2022 (the "PAGA PERIOD").

27 119. On May 28, 2021, PLAINTIFF gave written notice by electronic mail to the
28 Labor and Workforce Development Agency (the "Agency") and by certified mail to the

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

7 120. The policies, acts and practices heretofore described were and are an unlawful
8 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
9 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
10 properly record and provide legally required meal and rest periods, (c) failed to pay
11 minimum wages, (d) failed to pay overtime and sick pay wages, (e) failed to reimburse
12 employees for required expenses, (f) failed to provide wages when due, and (g) failed to
13 provide seating, all in violation of the applicable Labor Code sections listed in Labor Code
14 §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512,
15 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
16 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
17 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives
18 rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of
19 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
20 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
21 and the other AGGRIEVED EMPLOYEES.

22 121. All of the conduct and violations alleged herein occurred during the PAGA
23 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
25 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
26

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;
- D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

- 1 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
2 in which a violation occurs and one hundred dollars (\$100) per each member of
3 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
5 an award of costs for violation of Cal. Lab. Code § 226;
- 6 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
7 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
8 costs of suit; and,
- 9 G) The wages of all terminated employees in the CALIFORNIA LABOR
10 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
11 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 12 3. On behalf of the State of California and with respect to all AGGRIEVED
13 EMPLOYEES:
- 14 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
15 General Act of 2004.
- 16 4. On all claims:
- 17 A) An award of interest, including prejudgment interest at the legal rate;
18 B) Such other and further relief as the Court deems just and equitable; and,
19 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
20 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
21 §2802.

22
23 Dated: November 7, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
24 LLP

25 By: /s/ Norman B. Blumenthal

26 Norman B. Blumenthal
27 Kyle R. Nordrehaug
28 Nicholas J. De Blouw

Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: November 7, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiff