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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

12/28/2022

Clerk of the Court

BY: BOWMAN LIU

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

LAURO GONZALEZ-ARIAS, an
individual, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

MXB BATTERY OPERATIONS, LP, a
Limited Partnership; and DOES 1 through
50, inclusive,

Defendants.

Lead Case No.: CGC-21-595687

[*Related Case*: CGC-21-595759]

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

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant MXB Battery Operations, LP (“DEFENDANT”) is a Limited
7 Partnership that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT provides hotel accommodations and hosts banquets and other
10 social functions.

11 3. PLAINTIFF was employed by DEFENDANT in California from September of
12 2019 until June of 2020 and from September of 2020 until February of 2021 and was at all times
13 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled
14 to the legally required meal and rest periods and payment of minimum and overtime wages due
15 for all time worked.

16 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
17 defined as all individuals who are or previously were employed by DEFENDANT in California
18 who were classified as hourly, non-exempt employees (the “CALIFORNIA CLASS”) during
19 the period October 1, 2017 to the earlier of December 21, 2022 or preliminary approval,
20 whichever is sooner (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for
21 the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
22 (\$5,000,000.00).

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

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

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

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

23 24 **THE CONDUCT**

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

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
3 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
4 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
5 should have been PLAINTIFF's off-duty meal break. PLAINTIFF and CALIFORNIA
6 CLASS Members also worked off the clock with respect to time spent undergoing mandatory
7 drug testing or any other testing and/or examination required as a condition of employment.
8 Additionally, before clocking in, PLAINTIFF and CALIFORNIA CLASS Members, were
9 required to wait in-line for a COVID-19 screening, one which included an on-line questionnaire
10 about their current set of symptoms before being each employee was scanned and screened for
11 a fever. PLAINTIFF was not allowed to clock in until this process was completed. Also,
12 DEFENDANT, as a matter of established company policy and procedure, administered a
13 uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
14 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the
15 course of their employment, PLAINTIFF and CALIFORNIA CLASS Members were paid less
16 than they would have been paid had they been paid for actual recorded time rather than
17 "rounded" time. DEFENDANT's policy and practice not to pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
19 business records. As a result, DEFENDANT failed to pay PLAINTIFF and other
20 CALIFORNIA CLASS Members the proper minimum and overtime wages.

21 9. State law provides that employees must be paid overtime and meal and rest break
22 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
23 CALIFORNIA CLASS Members were compensated at an hourly rate plus incentive pay that
24 was tied to specific elements of an employee's performance.

25 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
26 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
27 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
28 performance for DEFENDANT. The non-discretionary incentive program provided all

1 employees paid on an hourly basis with incentive compensation when the employees met the
2 various performance goals set by DEFENDANT. However, when calculating the regular rate
3 of pay in order to pay overtime and premiums for meal and rest break violations to PLAINTIFF
4 and other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
5 compensation as part of the employees' "regular rate of pay" for purposes of calculating
6 overtime pay and premium pay for meal and rest break violations. As a matter of law, the
7 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
8 must be included in the "regular rate of pay." The failure to do so has resulted in an
9 underpayment of overtime compensation and meal and rest break premium pay to PLAINTIFF
10 and other CALIFORNIA CLASS Members by DEFENDANT.

11 11. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
12 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
13 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees regularly earn
14 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
15 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
16 pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

17 12. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
18 employees be calculated by dividing the employee's total wages, not including overtime
19 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
20 of employment.

21 13. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
22 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
23 discretionary incentive wages, including but not limited to, incentives, shift differential pay, and
24 bonuses, which increased their regular rate of pay. However, when sick pay was paid, it was
25 paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA CLASS, as
26 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

27 14. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
28 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting

1 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
2 believes and based thereon alleges that such failure to pay sick pay at regular rate was willful,
3 such that PLAINTIFF and members of the CALIFORNIA CLASS whose employment has
4 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

5 15. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
6 employment are due and payable twice during each calendar month, on days designated in
7 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
8 requires employers to pay employees all wages owed within eleven (11) days of the close of the
9 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
10 CALIFORNIA CLASS Members all wages owed to them within eleven (11) days of the close
11 of the payroll period.

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

22 17. As a result of their rigorous work schedules, PLAINTIFF and other
23 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
24 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
25 other CALIFORNIA CLASS Members were required from time to time to perform work as
26 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
27 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
28 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in

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

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

27 19. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
28 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount

1 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
2 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
3 all time worked, meaning the time during which an employee was subject to the control of an
4 employer, including all the time the employee was permitted or suffered to permit this work.
5 DEFENDANT required these employees to work off the clock without paying them for all the
6 time they were under DEFENDANT's control. Specifically, PLAINTIFF worked through his
7 various meal and rest breaks as he was often interrupted by clients and their immediate needs.
8 This work also was done off-the-clock. As such, DEFENDANT knew or should have known
9 that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated
10 for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members
11 forfeited time worked by working without their time being accurately recorded and without
12 compensation at the applicable minimum wage and overtime wage rates. To the extent that the
13 time worked off the clock did not qualify for overtime premium payment, DEFENDANT failed
14 to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§
15 1194, 1197, and 1197.1.

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

26 21. In the course of their employment PLAINTIFF and other CALIFORNIA
27 CLASS Members as a business expense, were required by DEFENDANT to use their own
28 personal cellular phones as a result of and in furtherance of their job duties as employees for

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

7 22. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
8 other members of the CALIFORNIA CLASS with complete and accurate wage statements
9 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
10 Code § 226 provides that every employer shall furnish each of his or her employees with an
11 accurate itemized wage statement in writing showing, among other things, gross wages
12 earned and all applicable hourly rates in effect during the pay period and the corresponding
13 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
14 Members were paid on an hourly basis. As such, the wage statements should reflect all
15 applicable hourly rates during the pay period and the total hours worked, and the applicable
16 pay period in which the wages were earned pursuant to California Labor Code Section
17 226(a)(2). The wage statements DEFENDANT provided to PLAINTIFF and other
18 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
19 wage statements failed to identify the accurate total hours worked each pay period. When
20 the hours shown on the wage statements were added up, they did not equal the actual total
21 hours worked during the pay period. Additionally, DEFENDANT violated Section
22 226(a)(9) by failing to identify the correct rates of pay and number of hours worked,
23 including for the "Admin Pay" item of pay, which was a wage payment. Aside, from the
24 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
25 itemized wage statement that lists all the requirements under California Labor Code 226 *et*
26 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
27 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
28 § 226.

1 23. During the CALIFORNIA CLASS period, pursuant to DEFENDANT's
2 company policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members
3 were forced to forfeit gratuities left for them by customers to DEFENDANT's agents who
4 provided no service to the customers that resulted in the gratuity. DEFENDANT routinely
5 added anywhere from 18%-22% service charges to its food and beverage banquet bills.
6 These service charges were in the form of automatic charges which customers are required
7 to pay, and which reasonably appear to be gratuities for the service staff. It is typical and
8 customary in the industry that establishments impose gratuity charges in the range of 18%-
9 22% of the food and beverage bill. Thus, when customers have paid these charges, it is
10 reasonable for them to have believed they were gratuities to be paid to the service staff.
11 Indeed, because many of these charges are depicted to customers, and the custom in the food
12 and beverage industry that gratuities in the range of 18%-22% are paid for food and
13 beverage service, customers have paid these charges reasonably believing they were remitted
14 to the service staff. However, DEFENDANT has not remitted the total proceeds of these
15 gratuities to the non-managerial employees who serve the food and beverages. Instead,
16 DEFENDANT has a policy and practice of retaining for itself a portion of these gratuities
17 and/or using a portion of these gratuities to pay managers or other non-service employees.
18 As a result, PLAINTIFF and CALIFORNIA CLASS Members have not received the total
19 proceeds of the gratuities, to which they are entitled to under California law.

20 24. DEFENDANT is generally in the business of owning and operating a hotel,
21 including the pubs and restaurant on the premises. In addition, DEFENDANT also provides
22 banquet services to large groups, such as wedding parties and other banquet events. During
23 the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
24 Members were in the "chain of service" and earned gratuities based on their service for their
25 customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to
26 forfeit portions of their gratuities, which said gratuities were kept by DEFENDANT and
27 their agents who were not in the chain of service from which the gratuity resulted.
28 PLAINTIFF and other CALIFORNIA CLASS Members contend that any gratuities kept by

1 DEFENDANT were illegal and in violation of California law because PLAINTIFF and
2 other CALIFORNIA CLASS Members, not DEFENDANT, provided the service for to
3 whom the gratuity should have been paid.

4 25. California Labor Code § 351 establishes the requirements for an employer
5 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
6 employees. California Labor Code § 351 expressly prohibits employers and their agents
7 from collecting, taking, or receiving any portion of a gratuity. California Labor Code §
8 350(e) defines the term “gratuity” as including any money that has been paid or given or left
9 for an employee by a patron of a business over and above the actual amount due the business
10 for services rendered or for goods, food, drink or articles sold or served to such patron.
11 Labor Code § 353 requires employers to keep accurate records of all gratuities they receive,
12 directly or indirectly.

13 26. Although tip pooling is not expressly prohibited by the Labor Code, employees
14 who mandate tip pooling must only distribute pooled tips to employees in the “chain of
15 service.” By distributing tips to DEFENDANT directly and to their agents who were not in
16 the “chain of service,” DEFENDANT has violated and continue to violate the legal
17 requirements for handling pooled tips and violated the holding in *O’Grady v. Merchant*
18 *Exchange Productions, Inc.*, No. A148513 (Court of Appeals of California, First District,
19 Division Two.)

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

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

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

JURISDICTION AND VENUE

30. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section

1 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
2 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

9
10 **THE CALIFORNIA CLASS**

11 32. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
12 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
13 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
14 California class, defined as all individuals who are or previously were employed by
15 DEFENDANT in California who were classified as hourly, non-exempt employees (the
16 "CALIFORNIA CLASS") during the period October 1, 2017 to the earlier of December 21,
17 2022 or preliminary approval, whichever is sooner (the "CALIFORNIA CLASS
18 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
19 Members is under five million dollars (\$5,000,000.00).

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

23 34. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
24 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
25 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
26 failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA
27 CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required
28 employees to perform this work and permits or suffers to permit this work.

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

10 36. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
11 CLASS Members is impracticable.

12 37. DEFENDANT violated the rights of the CALIFORNIA CLASS under
13 California law by:

- 14 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
15 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
16 and/or deceptively having in place company policies, practices and
17 procedures that failed to record and pay PLAINTIFF and the other
18 members of the CALIFORNIA CLASS for all time worked, including
19 minimum wages owed and overtime wages owed for work performed
20 by these employees;
- 21 (b) Committing an act of unfair competition in violation of the UCL, by
22 failing to provide the PLAINTIFF and the other members of the
23 CALIFORNIA CLASS with the legally required meal and rest periods;
24 and,
- 25 (c) Committing an act of unfair competition in violation of the California
26 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
27 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
28

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

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

- 5 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
6 that the joinder of all such persons is impracticable and the disposition
7 of their claims as a class will benefit the parties and the Court;
- 8 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
9 issues that are raised in this Complaint are common to the
10 CALIFORNIA CLASS will apply to every member of the
11 CALIFORNIA CLASS;
- 12 (c) The claims of the representative PLAINTIFF are typical of the claims
13 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
14 the other members of the CALIFORNIA CLASS, was classified as a
15 non-exempt employee paid on an hourly basis who was subjected to the
16 DEFENDANT's deceptive practice and policy which failed to provide
17 the legally required meal and rest periods to the CALIFORNIA CLASS
18 and thereby underpaid compensation to PLAINTIFF and
19 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
20 result of DEFENDANT's employment practices. PLAINTIFF and the
21 members of the CALIFORNIA CLASS were and are similarly or
22 identically harmed by the same unlawful, deceptive, and unfair
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 39. In addition to meeting the statutory prerequisites to a Class Action, this action
5 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

6 (a) Without class certification and determination of declaratory, injunctive,
7 statutory and other legal questions within the class format, prosecution
8 of separate actions by individual members of the CALIFORNIA
9 CLASS will 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
20 to act on grounds generally applicable to the CALIFORNIA CLASS,
21 making appropriate class-wide relief with respect to the CALIFORNIA
22 CLASS as a whole in that DEFENDANT failed to pay all wages due to
23 members of the CALIFORNIA CLASS as required by law;

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

1 competition, along with declaratory relief, injunctive relief, and
2 incidental equitable relief as may be necessary to prevent and
3 remedy the conduct declared to constitute 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
13 be avoided to recover the relatively small amount of economic
14 losses sustained by the individual CALIFORNIA CLASS
15 Members when compared to the substantial expense and burden
16 of individual 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
26 parties to the adjudication or substantially impair or
27 impede their ability to protect their interests;
28

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

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

- 16 (a) The questions of law and fact common to the CALIFORNIA CLASS
17 predominate over any question affecting only individual CALIFORNIA
18 CLASS Members because the DEFENDANT's employment practices
19 are applied with respect to the CALIFORNIA CLASS;
20 (b) A Class Action is superior to any other available method for the fair
21 and efficient adjudication of the claims of the members of the
22 CALIFORNIA CLASS because in the context of employment litigation
23 a substantial number of individual CALIFORNIA CLASS Members
24 will avoid asserting their rights individually out of fear of retaliation or
25 adverse impact on their employment;
26 (c) The members of the CALIFORNIA CLASS are so numerous that it is
27 impractical to bring all members of the CALIFORNIA CLASS before
28 the Court;

- 1 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
2 be able to obtain effective and economic legal redress unless the action
3 is maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
5 equitable relief for the acts of unfair competition, statutory violations
6 and other improprieties, and in obtaining adequate compensation for
7 the damages and injuries which DEFENDANT's actions have inflicted
8 upon the CALIFORNIA CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of
11 the CALIFORNIA CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally
13 applicable to the CALIFORNIA CLASS, thereby making final class-
14 wide relief appropriate with respect to the CALIFORNIA CLASS as a
15 whole;
- 16 (h) The members of the CALIFORNIA CLASS are readily ascertainable
17 from the business records of DEFENDANT; and,
- 18 (i) Class treatment provides manageable judicial treatment calculated to
19 bring a efficient and rapid conclusion to all litigation of all wage and
20 hour related claims arising out of the conduct of DEFENDANT as to
21 the members of the CALIFORNIA CLASS.

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

27
28

THE CALIFORNIA LABOR SUB-CLASS

42. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California who were classified as hourly, non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) during the period October 1, 2017 to the earlier of December 21, 2022 or preliminary approval, whichever is sooner (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

43. DEFENDANT, 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, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

1 45. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
2 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

- 20 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
21 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
22 CLASS all wages due for overtime worked, for which DEFENDANT is
23 liable pursuant to Cal. Lab. Code § 1194;
- 24 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
25 accurately pay PLAINTIFF and the members of the CALIFORNIA
26 LABOR SUB-CLASS the correct minimum wage pay for which
27 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 28

- 1 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
2 the members of the CALIFORNIA LABOR SUB-CLASS with an
3 accurate itemized statement in writing showing the corresponding
4 correct amount of wages earned by the employee;
- 5 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
6 PLAINTIFF and the other members of the CALIFORNIA LABOR
7 SUB-CLASS with all legally required off-duty, uninterrupted thirty
8 (30) minute meal breaks and the legally required off-duty rest breaks;
9 and,
- 10 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
11 and the CALIFORNIA LABOR SUB-CLASS members with necessary
12 expenses incurred in the discharge of their job duties; and,
- 13 (g) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
14 when an employee is discharged or quits from employment, the
15 employer must pay the employee all wages due without abatement, by
16 failing to tender full payment and/or restitution of wages owed or in the
17 manner required by California law to the members of the
18 CALIFORNIA LABOR SUB-CLASS who have terminated their
19 employment.

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

- 22 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
23 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
24 CLASS Members is impracticable and the disposition of their claims as
25 a class will benefit the parties and the Court;
- 26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
27 issues that are raised in this Complaint are common to the
28

CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS.

PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

12
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

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

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

20 52. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
21 Code § 17021.

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

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

1 may be necessary to restore to any person in interest any money or property,
2 real or personal, which may have been acquired by means of such unfair
competition.

3 Cal. Bus. & Prof. Code § 17203.

4 54. By the conduct alleged herein, DEFENDANT has engaged and continues to
5 engage in a business practice which violates California law, including but not limited to, the
6 applicable Industrial Wage Order(s), the California Code of Regulations and the California
7 Labor Code including Sections 204, 210, 221, 226.7, 246, 351, 510, 512, 1194, 1197,
8 1197.1, 1198 & 2802, the Fair Labor Standards Act and federal regulations promulgated
9 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
10 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
11 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

1 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
2 wrongfully withheld.

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

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

11 59. 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
14 pay for each workday in which a second off-duty meal period was not timely provided for
15 each ten (10) hours of work.

16 60. 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 61. By and through the unlawful and unfair business practices described herein,
20 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and
21 the other members of the CALIFORNIA CLASS, including earned wages for all time
22 worked, and has deprived them of valuable rights and benefits guaranteed by law and
23 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
24 allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

1 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
2 *seq.*

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

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

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

19
20 **SECOND CAUSE OF ACTION**

21 **For Failure To Pay Minimum Wages**

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

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

24 **and Against All Defendants)**

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

1 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
3 California Labor Code and the Industrial Welfare Commission requirements for
4 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and
5 CALIFORNIA CLASS Members.

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

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

11 70. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
12 wages, including minimum wage compensation and interest thereon, together with the costs
13 of suit.

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

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

24 73. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately calculated the correct time worked and consequently underpaid the actual time
26 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
27 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
28

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

3 74. As a direct result of DEFENDANT's unlawful wage practices as alleged
4 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
5 not receive the correct minimum wage compensation for their time worked for
6 DEFENDANT.

7 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
8 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
9 Members to work without paying them for all the time they were under DEFENDANT's
10 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
12 that they were entitled to, constituting a failure to pay all earned wages.

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

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

26 78. In performing the acts and practices herein alleged in violation of California
27 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
28 CLASS for all time worked and provide them with the requisite compensation,

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

6 79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS therefore request recovery of all unpaid wages, including overtime wages,
8 according to proof, interest, statutory costs, as well as the assessment of any statutory
9 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or
10 other applicable statutes. To the extent overtime compensation is determined to be owed to
11 the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
12 DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore these
13 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
14 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
15 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
16 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
17 are entitled to seek and recover statutory costs.

18 19 **THIRD CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

21 **[Cal. Lab. Code § 510]**

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

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

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

1 California Labor Code and the Industrial Welfare Commission requirements for
2 DEFENDANT's failure to pay these employees for all overtime worked, including, work
3 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
4 and/or forty (40) hours in any workweek.

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

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

11 84. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
12 wages, including minimum wage and overtime compensation and interest thereon, together
13 with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
14 employee for longer hours than those fixed by the Industrial Welfare Commission is
15 unlawful.

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

20 86. DEFENDANT's unlawful wage and hour practices manifested, without
21 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
22 implementing a policy and practice that failed to accurately record overtime worked by
23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
24 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
26 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
27 workweek.
28

1 87. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
3 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
4 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
5 violation of the California Labor Code, the Industrial Welfare Commission requirements
6 and other applicable laws and regulations.

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

10 89. 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 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
14 subject to a valid collective bargaining agreement that would preclude the causes of action
15 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of
16 himself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
17 of non-negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

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

22 95. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
23 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
24 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
25 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
26 extent minimum wage compensation is determined to be owed to the CALIFORNIA
27 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
28 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also

1 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
2 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
3 conduct as alleged herein was willful, intentional and not in good faith. Further,
4 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
5 and recover statutory costs.

6
7
8 **FOURTH CAUSE OF ACTION**

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

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

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

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

16 97. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
17 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
18 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
19 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
20 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
21 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
22 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
23 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
24 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
25 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
26 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
27 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
28 second off-duty meal period in some workdays in which these employees were required by

1 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
2 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
3 breaks without additional compensation and in accordance with DEFENDANT's corporate
4 policy and practice.

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

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

14
15 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

1 (10) minutes for some shifts worked of ten (10) hours or more from time to time.
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
3 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
5 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

15 **SIXTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 2802]**

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

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

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

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

1 106. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802,
2 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
3 CLASS members for required expenses incurred in the discharge of their job duties for
4 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the
5 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
6 limited to, costs related to using their personal cellular phones, all on behalf of and for the
7 benefit of DEFENDANTS. DEFENDANTS' policy, practice and procedure was to not
8 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
9 expenses resulting from using their personal cellular phones for DEFENDANTS within the
10 course and scope of their employment for DEFENDANTS. These expenses were necessary
11 to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS'
12 conduct to assert any waiver of this expectation. Although these expenses were necessary
13 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
14 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
15 LABOR SUB-CLASS members for these expenses as an employer is required to do under
16 the laws and regulations of California.

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

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1 **SEVENTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

6 108. PLAINTIFF, 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.

9 109. 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
13 compensation is solely based on a salary and who is exempt from payment of
14 overtime under subdivision (a) of Section 515 or any applicable order of the
15 Industrial Welfare Commission,
16 (3) the number of piecerate units earned and any applicable piece rate if the employee
17 is paid on a piece-rate basis,
18 (4) all deductions, provided that all deductions made on written orders of the
19 employee 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
25 the 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.

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

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

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

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1 **EIGHTH CAUSE OF ACTION**

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

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

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

6 112. PLAINTIFF, 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.

9 113. Cal. Lab. Code § 200 states that:

10 As used in this article:

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

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

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

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

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

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

26 117. Cal. Lab. Code § 203 states:

27 If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
28 employee who is discharged or who quits, the wages of the employee shall

1 continue as a penalty from the due date thereof at the same rate until paid
2 or until an action therefor is commenced; but the wages shall not continue
for more than 30 days.

3 118. When PLAINTIFF left employment with DEFENDANTS,
4 DEFENDANTS still owed PLAINTIFF wages for work performed because
5 PLAINTIFF was not compensated correctly for his overtime worked and meal and rest
6 breaks missed. To date, DEFENDANTS has not paid PLAINTIFF these wages still
7 owed to him. As such, DEFENDANTS has not fully paid PLAINTIFF all wages still
8 owed to him or any penalty wages that are now owed to him under California Labor
9 Code § 203.

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

14 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
15 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,
16 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
17 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated
18 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and
19 statutory costs as allowed.

20 **NINTH CAUSE OF ACTION**

21 **For Failure To Pay Statutory Gratuities**

22 **[Cal. Lab. Code §§ 351, *et seq.*]**

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

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

122. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial banquet service employees the total proceeds of gratuities added to banquet customers' bills constitutes a violation of California Labor Code Section 351. This violation is enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANT's conduct constitutes unlawfully, unfair, and/or fraudulent business acts or practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting to the non-managerial service employees the total gratuities that were charged to customers.

123. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, including the loss of gratuities to which they were entitled. and seek all wages earned and due, interest, penalties, expenses and costs of suit.

TENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

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

1 126. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, brings this Representative Action on behalf of the State of California with respect to
4 himself and all individuals who are or previously were employed by Defendant MXB Battery
5 Operations, LP in California who were classified as hourly, non-exempt employees
6 (“AGGRIEVED EMPLOYEES”) at any time during during the period of time from October
7 1, 2020 through the earlier of December 21, 2022 or preliminary approval, whichever is sooner
8 (the "PAGA PERIOD").

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

18 128. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
21 properly record and provide legally required meal and rest periods, (c) failed to pay
22 minimum wages, (d) failed to pay overtime and sick pay wages, (e) failed to reimburse
23 employees for required expenses, (f) failed to provide wages when due, and (g) failed to
24 provide gratuities, all in violation of the applicable Labor Code sections listed in Labor
25 Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
26 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of Regulations, Title 8, Section
27 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to
28

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

5 129. 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 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
8 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
9 2018.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

27
28 ¹Plaintiff 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 Eighth and
2 Ninth Causes Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
3 class 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 PLAINTIFF and the other
6 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) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;
- 16 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
17 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
18 costs of suit; and,
- 19 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
20 1197; and,
- 21 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
22 CLASS as a penalty from the due date thereof at the same rate until paid or until
23 an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 24 3. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:
- 26 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004.
- 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
4 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
5 and/or §2802.

6 Dated: December 28, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
7

8
9
10 By: /s/ Norman B. Blumenthal
11 Norman B. Blumenthal
 Kyle R. Nordrehaug
 Nicholas J. De Blouw
12 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

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

Dated: December 28, 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