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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

ADRIANA ESCOBAR, an individual, an
individual , on behalf of herself and on behalf of
all persons similarly situated,

Plaintiffs,

vs.

CORTECH WEST STAFFING LLC, a
California Limited Liability Company;
FABITFITFUN, INC., a Corporation; and DOES
2 through 50, inclusive,

Defendants.

Case No. 21STCV31457

**CONSOLIDATED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
9. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B),.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

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

11 3. Defendants Cortech West Staffing LLC and Fabfitfun, Inc. were the joint
12 employers of PLAINTIFFS as evidenced by paychecks and by the company PLAINTIFFS
13 performed work for respectively, and are therefore jointly responsible as employers for the
14 conduct alleged herein, and are therefore collectively referred to herein as "DEFENDANT."

15 4. PLAINTIFF Adriana Escobar was employed by DEFENDANT from June of 2020
16 to March of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
17 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
18 of minimum and overtime wages due for all time worked.

19 5. PLAINTIFF brings this Class Action on behalf of herself and a California class,
20 defined as all individuals who are or previously were employed by Defendant Cortech West
21 Staffing LLC and/or Fabfitfun, Inc. in California and classified as non-exempt employees (the
22 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
23 filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA
24 CLASS PERIOD”).

25 6. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
26 Members is under five million dollars (\$5,000,000.00).

27 7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
28 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

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

10 8. The true names and capacities, whether individual, corporate, subsidiary,
11 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
12 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
13 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
14 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
15 PLAINTIFF are informed and believes, and based upon that information and belief alleges, that
16 the Defendants named in this Complaint, including DOES 2 through 50, inclusive, are
17 responsible in some manner for one or more of the events and happenings that proximately
18 caused the injuries and damages hereinafter alleged.

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

27
28 **THE CONDUCT**

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

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

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

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

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

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

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

22 15. DEFENDANT also failed to provide PLAINTIFF and the other members of the
23 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
24 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
25 every employer shall furnish each of his or her employees with an accurate itemized wage
26 statement in writing showing, among other things, gross wages earned and all applicable hourly
27 rates in effect during the pay period and the corresponding amount of time worked at each
28 hourly rate. Aside, from the violations listed above, DEFENDANT failed to issue to

1 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
2 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
3 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
4 Code § 226.

5 16. 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(d) expressly
8 requires employers to pay employees all wages owed within seven (7) 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 seven (7) days of the close of
11 the payroll period, including but not limited to for the “Gross Up Pay” wage payments.

12 17. 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 18. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
23 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically,
24 PLAINTIFF and other non-exempt employees earn non-discretionary remuneration. Rather
25 than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF
26 and other CALIFORNIA CLASS Members at their base rates of pay.

27 19. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
28 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses

1 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
2 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
3 2802, employers are required to indemnify employees for all expenses incurred in the course
4 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
5 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
6 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
7 directions of the employer, even though unlawful, unless the employee, at the time of obeying
8 the directions, believed them to be unlawful."

9 20. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
10 Members as a business expense, were required by DEFENDANT to use their own personal
11 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
12 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
13 cost associated with the use of their personal cellular phones and personal vehicles for
14 DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
15 were required by DEFENDANT to use their personal cellular phones to respond to managers
16 while off the clock (which also results in minimum wage and overtime violations). As a result,
17 in the course of their employment with DEFENDANT, PLAINTIFF and other members of the
18 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
19 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
20 benefit of DEFENDANT.

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

1 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

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

1
2 **JURISDICTION AND VENUE**

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

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

13
14 **THE CALIFORNIA CLASS**

15 26. PLAINTIFF Adriana Escobar brings the First Cause of Action for Unfair,
16 Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et*
17 *seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
18 California class, defined as all individuals who are or previously were employed by Defendant
19 Cortech West Staffing LLC and/or Fabfitfun, Inc. in California and classified as non-exempt
20 employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4)
21 years prior to the filing of this Complaint and ending on the date as determined by the Court
22 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
23 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

27 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engages in a practice whereby DEFENDANT fails to record all meal and rest breaks
3 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT
4 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
5 to permit this work.

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

15 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 31. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
18 law by:

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

- 1 (c) Committing an act of unfair competition in violation of the California
2 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
3 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
4 the CALIFORNIA CLASS members with necessary expenses incurred in
5 the discharge of their job duties.

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

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

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

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

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

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

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

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

26 1) With respect to the First Cause of Action, the final relief on behalf
27 of the CALIFORNIA CLASS sought does not relate exclusively to
28 restitution because through this claim PLAINTIFF seeks

1 declaratory relief holding that the DEFENDANT's policy and
2 practices constitute unfair competition, along with declaratory
3 relief, injunctive relief, and incidental equitable relief as may be
4 necessary to prevent and remedy the conduct declared to constitute
5 unfair competition;

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

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

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

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

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

ability to protect their interests;

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

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be

1 able to obtain effective and economic legal redress unless the action is
2 maintained as a Class Action;

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

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

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

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

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

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

25
26 **THE CALIFORNIA LABOR SUB-CLASS**

27 36. PLAINTIFF Adriana Escobar, further brings the Second, Third, Fourth, Fifth,
28 Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all

1 members of the CALIFORNIA CLASS who are or previously were employed Defendant
2 Cortech West Staffing LLC and/or Fabfitfun, Inc. in California and classified as non-exempt
3 employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3)
4 years prior to the filing of the complaint and ending on the date as determined by the Court (the
5 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
6 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
7 Members is under five million dollars (\$5,000,000.00).

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

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

25 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
26 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

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

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

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

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

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

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

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

- 28 (d) The representative PLAINTIFF will fairly and adequately represent and

1 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
2 retained counsel who are competent and experienced in Class Action
3 litigation. There are no material conflicts between the claims of the
4 representative PLAINTIFF and the members of the CALIFORNIA
5 LABOR SUB-CLASS that would make class certification inappropriate.
6 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
7 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

1 CLASS as required by law;

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

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

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

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

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

27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA LABOR SUB-CLASS Members will

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

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

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

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

1 equitable relief for the acts of unfair competition, statutory violations and
2 other improprieties, and in obtaining adequate compensation for the
3 damages and injuries which DEFENDANT's actions have inflicted upon
4 the CALIFORNIA LABOR SUB-CLASS;

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

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

12 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
13 ascertainable from the business records of DEFENDANT. The
14 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
15 CLASS Members who worked for DEFENDANT in California at any
16 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

17 (i) Class treatment provides manageable judicial treatment calculated to bring
18 a efficient and rapid conclusion to all litigation of all wage and hour
19 related claims arising out of the conduct of DEFENDANT as to the
20 members of the CALIFORNIA LABOR SUB-CLASS.

21
22 **FIRST CAUSE OF ACTION**

23 **For Unlawful Business Practices**

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

25 **(By PLAINTIFF Adriana Escobar and the CALIFORNIA CLASS and Against All**
26 **Defendants)**

27 45. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
28 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

2 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
3 Code § 17021.

4 47. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
5 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
6 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
7 competition as follows:

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

12 Cal. Bus. & Prof. Code § 17203.

13 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
14 engage in a business practice which violates California law, including but not limited to, the
15 applicable Industrial Wage Order(s), the California Code of Regulations and the California
16 Labor Code including Sections 204, 210, 221, 226.7, 246, 248.5, 510, 512, 1194, 1197, 1197.1,
17 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder,
18 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
19 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
20 unfair competition, including restitution of wages wrongfully withheld.

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

26 50. By the conduct alleged herein, DEFENDANT’s practices are deceptive and
27 fraudulent in that DEFENDANT’s policy and practice fails to provide the legally mandated
28 meal and rest periods, and the required amount of compensation for missed meal and rest

1 periods, reporting time pay, and overtime and minimum wages owed, and Fair Labor Standards
2 Act overtime wages due for overtime worked as a result of failing to include non-discretionary
3 incentive compensation into their regular rate for purposes of computing the proper overtime
4 pay, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
5 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
6 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
7 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

8 51. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
9 and deceptive in that DEFENDANT's employment practices cause PLAINTIFF and the other
10 members of the CALIFORNIA CLASS to be underpaid during their employment with
11 DEFENDANT.

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

16 53. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
17 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
18 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
19 for each workday in which a second off-duty meal period was not timely provided for each ten
20 (10) hours of work.

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

24 55. By and through the unlawful and unfair business practices described herein,
25 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
26 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
27 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
28 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT

1 to unfairly compete against competitors who comply with the law.

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

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

12 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
13 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
14 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
15 engaging in any unlawful and unfair business practices in the future.

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

23
24 **SECOND CAUSE OF ACTION**

25 **For Failure To Pay Minimum Wages**

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

27 **(By PLAINTIFF Adriana Escobar and the CALIFORNIA LABOR SUB-CLASS**
28 **and Against All Defendants)**

1 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
3 paragraphs of this Complaint.

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

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

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

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

17 65. DEFENDANT maintains a wage practice of paying PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
19 time they work. As set forth herein, DEFENDANT's policy and practice is to unlawfully and
20 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS.

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

26 67. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately calculates the correct time worked and consequently underpays the actual time
28 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.

1 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
2 benefits in violation of the California Labor Code, the Industrial Welfare Commission
3 requirements and other applicable laws and regulations.

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

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

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

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

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

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

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code § 510]

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

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

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

1 workweek.

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

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

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

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

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

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

1 applicable laws and regulations.

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

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

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

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

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

27 87. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

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

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

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

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

25 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

3
4 **FIFTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

12 96. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are
13 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
14 Further, these employees were denied their first rest periods of at least ten (10) minutes for
15 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least
16 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
17 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
18 or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not
19 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
20 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied
21 their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

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

3
4 **SIXTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 226]**

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

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

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

14 (1) gross wages earned,

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

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

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

23 (5) net wages earned,

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

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

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

4 102. DEFENDANT also fails to provide PLAINTIFF and the other members of the
5 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed
6 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
7 provides that every employer shall furnish each of his or her employees with an accurate
8 itemized wage statement in writing showing, among other things, gross wages earned and all
9 applicable hourly rates in effect during the pay period and the corresponding amount of time
10 worked at each hourly rate. Aside, from the violations listed above, DEFENDANT failed to
11 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
12 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and
13 the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
14 violated Cal. Lab. Code § 226.

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

26
27 **SEVENTH CAUSE OF ACTION**

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

1 [Cal. Lab. Code § 2802]

2 (By PLAINTIFF Adriana Escobar and the CALIFORNIA LABOR SUB-CLASS and
3 Against All Defendants)

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

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

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

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

1 of California.

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

6 **EIGHTH CAUSE OF ACTION**

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

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

9 **(By PLAINTIFF Adriana Escobar and the CALIFORNIA LABOR SUB-CLASS**
10 **and Against All Defendants)**

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

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

15 As used in this article:

- 16 (a) "Wages" includes all amounts for labor performed by employees of
17 every description, whether the amount is fixed or ascertained by the
18 standard of time, task, piece, Commission basis, or other method of calculation.
19 (b) "Labor" includes labor, work, or service whether rendered or
performed under contract, subcontract, partnership, station plan, or other
agreement if the labor to be paid for is performed personally by the person
demanding payment.

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

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

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

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

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

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

114. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law. Additionally, PLAINTIFF was terminated by DEFENDANT on January 14, 2021 and DEFENDANT did not send PLAINTIFF his final wages until January 19, 2021 in violation of Cal. Lab. Code Section 203.

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

NINTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et. seq.*]

(By PLAINTIFF Adriana Escobar Against All Defendants)

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

117. 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

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

7 118. PLAINTIFF, and such persons that may be added from time to time who
8 satisfy the requirements and exhaust the administrative procedures under the Private
9 Attorney General Act, brings this Representative Action on behalf of the State of California
10 with respect to herself and all individuals who are or previously were employed by Cortech
11 West Staffing LLC and/or Fabfitfun, Inc. in California and who were classified as non-
12 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 7, 2020
13 until a date as determined by the Court (the "PAGA PERIOD").

14 119. On May 7, 2021, PLAINTIFF Adriana Escobar gave written notice by
15 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
16 certified mail to the employer of the specific provisions of this code alleged to have been
17 violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to
18 add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
19 PLAINTIFF may now commence a representative civil action under PAGA pursuant to
20 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
21 EMPLOYEES as herein defined.

22 120. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
24 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
25 properly record and provide legally required meal and rest periods, (c) failed to pay
26 minimum wages, (d) failed to pay overtime and sick pay wages, (e) failed to reimburse
27 employees for required expenses, and (f) failed to provide wages when due, all in violation
28 of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*,

210, 221, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seek recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

121. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged here in did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seek penalties for those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 ADJAR 12157 (Certified for Publication 12/19/18).

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

1 B) An award of attorney's fees and costs of suit, as allowable under the law,
2 including, bbut not limited to, pursuant to Labor Code §2699.

3 4. On all claims:

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

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

6 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
7 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
8 §2802.

9
10 Dated: March 13, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
11
12

13 By: /s/ Nicholas J. De Blouw

14 Nicholas J. De Blouw
15 Norman B. Blumenthal
16 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: March 13, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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