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June 25, 2021
CA2416

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Diesel Direct West, LLC
Certified Mail #70203160000075432718
C T Corporation
330 N. Brand Blvd.
Glendale, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 246, 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), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Diesel Direct West, LLC in California and classified as non-exempt employees during the time period of June 25, 2020 until a date as determined by the Court. Our offices represent Plaintiff Edgar Carbajal and other Aggrieved Employees in a lawsuit against Diesel Direct West, LLC (“Defendant”). Plaintiff Carbajal was employed by Defendant in California as a non-exempt employee in the position of driver from February of 2019 until April of 2021 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff

and other Aggrieved Employees with their wages. Specifically, Defendant violated Section 226(a)(9) by failing to identify the correct rates of pay and number of hours worked, including for the “Double Time” item of pay, which was a wage payment. Additionally, Plaintiff and Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and other Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period. When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code Section 226(a)(2). Further, Defendant violated Cal. Lab. Code Section 226(a)(8) by failing to list the correct legal entity that employed Plaintiff and other Aggrieved Employees. Additionally, Plaintiff contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SANTA CLARA**

9
10 EDGAR CARBAJAL, an individual, on behalf of
himself and on behalf of all persons similarly
11 situated,

12
13 Plaintiff,

14 vs.

15 DIESEL DIRECT WEST, LLC, a California
Limited Liability Company; and DOES 1 through
16 50, inclusive,

17
18 Defendants.

Case No. _____

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, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS 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; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Diesel Direct West, LLC (“DEFENDANT”) is a California Limited
7 Liability Company that at all relevant times mentioned herein conducted and continues to
8 conduct substantial business in the state of California.

9 2. DEFENDANT provides on-site fuel to truck fleets and various other clients.

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

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
17 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
18 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
19 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
20 (\$5,000,000.00).

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

1 the other members of the CALIFORNIA CLASS who have been economically injured by
2 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
3 equitable relief.

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

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

21 22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
27 and CALIFORNIA CLASS Members to work without paying them for all the time they were
28 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work

1 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
2 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
3 should have been PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established
4 company policy and procedure, administered a uniform practice of rounding the actual time
5 worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the
6 benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and
7 CALIFORNIA CLASS Members were paid less than they would have been paid had they been
8 paid for actual recorded time rather than "rounded" time. DEFENDANT's policy and practice
9 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is
10 evidenced by DEFENDANT's business records. As a result, DEFENDANT failed to pay
11 PLAINTIFF and other CALIFORNIA CLASS Members the proper minimum and overtime
12 wages.

13 9. In addition, State and federal law provides that employees must be paid overtime
14 and meal and rest break premiums at one-and-one-half times their "regular rate of pay."
15 PLAINTIFF and other CALIFORNIA CLASS Members were compensated at an hourly rate
16 plus incentive pay that is tied to specific elements of an employee's performance.

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

1 meal and rest break premium pay to PLAINTIFF and other CALIFORNIA CLASS Members
2 by DEFENDANT.

3 11. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
4 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically,
5 PLAINTIFF and other non-exempt employees earn non-discretionary remuneration, including
6 but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at
7 the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
8 CALIFORNIA CLASS Members at their base rates of pay.

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

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

26 14. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
28 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and

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

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

1 required to be present on the premises he was from time to time required by DEFENDANT to
2 work during what should of been his off duty rest period.

3 16. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
4 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
5 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
6 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
7 all time worked, meaning the time during which an employee was subject to the control of an
8 employer, including all the time the employee was permitted or suffered to permit this work.
9 DEFENDANT required these employees to work off the clock without paying them for all the
10 time they were under DEFENDANT's control. Specifically, PLAINTIFF worked through his
11 various meal and rest breaks as he was often interrupted by clients and their immediate needs. This
12 work also was done off-the-clock. As such, DEFENDANT knew or should have known that
13 PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for
14 all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
15 time worked by working without their time being accurately recorded and without compensation
16 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
17 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
18 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
19 1197, and 1197.1.

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

1 employee, at the time of obeying the directions, believed them to be unlawful."

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

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

1 other CALIFORNIA LABOR SUB-CLASS. Members Aside, from the violations listed above
2 in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
3 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
4 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS
5 with wage statements which violated Cal. Lab. Code § 226.

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

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

26 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
27 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
28 Labor Code and failed to pay his all minimum and overtime wages due to him.

1 DEFENDANT did not have a policy or practice which provided timely off-duty meal and
2 rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal
3 and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him
4 from being relieved of all of his duties for the legally required off-duty meal periods. As a
5 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal
6 periods is evidenced by DEFENDANT's business records. To date, DEFENDANT has not
7 fully paid PLAINTIFF the overtime compensation still owed to him or any penalty wages
8 owed to him under Cal. Lab. Code § 203.

9 10 **JURISDICTION AND VENUE**

11 23. This Court has jurisdiction over this Action pursuant to California Code of
12 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
13 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
14 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

21 **THE CALIFORNIA CLASS**

22 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
23 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
24 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
25 California class, defined as all individuals who are or previously were employed by
26 DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA
27 CLASS") at any time during the period beginning four (4) years prior to the filing of this
28

1 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
2 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
3 Members is under five million dollars (\$5,000,000.00).

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

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

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

22 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
23 CLASS Members is impracticable.

24 30. DEFENDANT violated the rights of the CALIFORNIA CLASS under
25 California law by:

- 26 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
27 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
28 and/or deceptively having in place company policies, practices and

1 procedures that failed to record and pay PLAINTIFF and the other
2 members of the CALIFORNIA CLASS for all time worked, including
3 minimum wages owed and overtime wages owed for work performed
4 by these employees;

5 (b) Committing an act of unfair competition in violation of the UCL, by
6 failing to provide the PLAINTIFF and the other members of the
7 CALIFORNIA CLASS with the legally required meal and rest periods;
8 and,

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

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

16 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
17 that the joinder of all such persons is impracticable and the disposition
18 of their claims as a class will benefit the parties and the Court;

19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
20 issues that are raised in this Complaint are common to the
21 CALIFORNIA CLASS will apply to every member of the
22 CALIFORNIA CLASS;

23 (c) The claims of the representative PLAINTIFF are typical of the claims
24 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
25 the other members of the CALIFORNIA CLASS, was classified as a
26 non-exempt employee paid on an hourly basis who was subjected to the
27 DEFENDANT's deceptive practice and policy which failed to provide
28 the legally required meal and rest periods to the CALIFORNIA CLASS

1 and thereby underpaid compensation to PLAINTIFF and
2 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
3 result of DEFENDANT's employment practices. PLAINTIFF and the
4 members of the CALIFORNIA CLASS were and are similarly or
5 identically harmed by the same unlawful, deceptive, and unfair
6 misconduct engaged in by DEFENDANT; and,

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

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

- 17 (a) Without class certification and determination of declaratory, injunctive,
18 statutory and other legal questions within the class format, prosecution
19 of separate actions by individual members of the CALIFORNIA
20 CLASS will create the risk of:
- 21 1) Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA CLASS which would establish
23 incompatible standards of conduct for the parties opposing the
24 CALIFORNIA CLASS; and/or,
 - 25 2) Adjudication with respect to individual members of the
26 CALIFORNIA CLASS which would as a practical matter be
27 dispositive of interests of the other members not party to the
28

1 adjudication or substantially impair or impede their ability to
2 protect their interests.

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

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

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

22 1) The interests of the members of the CALIFORNIA CLASS in
23 individually controlling the prosecution or defense of separate
24 actions in that the substantial expense of individual actions will
25 be avoided to recover the relatively small amount of economic
26 losses sustained by the individual CALIFORNIA CLASS
27 Members when compared to the substantial expense and burden
28 of individual prosecution of this litigation;

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 CALIFORNIA CLASS would as a practical matter be
9 dispositive of the interests of the other members not
10 parties to the adjudication or substantially impair or
11 impede their ability to protect their interests;
- 12 3) In the context of wage litigation because a substantial number of
13 individual CALIFORNIA CLASS Members will avoid asserting
14 their legal rights out of fear of retaliation by DEFENDANT,
15 which may adversely affect an individual's job with
16 DEFENDANT or with a subsequent employer, the Class Action
17 is the only means to assert their claims through a representative;
18 and,
- 19 4) A class action is superior to other available methods for the fair
20 and efficient adjudication of this litigation because class
21 treatment will obviate the need for unduly and unnecessary
22 duplicative litigation that is likely to result in the absence of
23 certification of this action pursuant to Cal. Code of Civ. Proc. §
24 382.

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

- 27 (a) The questions of law and fact common to the CALIFORNIA CLASS
28 predominate over any question affecting only individual CALIFORNIA

1 CLASS Members because the DEFENDANT's employment practices
2 are applied with respect to the CALIFORNIA CLASS;

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

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

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

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

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

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

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

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

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

10 **THE CALIFORNIA LABOR SUB-CLASS**

11 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
12 and Eighth Causes of Action on behalf of a California sub-class, defined as all members of
13 the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
14 California and classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
15 CLASS") at any time during the period beginning three (3) years prior to the filing of this
16 Complaint and ending on the date as determined by the Court(the "CALIFORNIA LABOR
17 SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
18 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
19 under five million dollars (\$5,000,000.00).

20 36. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
21 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
22 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
23 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
25 these employees, even though DEFENDANT enjoyed the benefit of this work, required
26 employees to perform this work and permitted or suffered to permit this work.
27 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
28

1 which these employees are entitled in order to unfairly cheat the competition and unlawfully
2 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
3 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
4 should be adjusted accordingly.

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

10 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

- 1 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
3 CLASS all wages due for overtime worked, for which DEFENDANT is
4 liable pursuant to Cal. Lab. Code § 1194;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
6 accurately pay PLAINTIFF and the members of the CALIFORNIA
7 LABOR SUB-CLASS the correct minimum wage pay for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
10 the members of the CALIFORNIA LABOR SUB-CLASS with an
11 accurate itemized statement in writing showing the corresponding
12 correct amount of wages earned by the employee;
- 13 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
14 PLAINTIFF and the other members of the CALIFORNIA LABOR
15 SUB-CLASS with all legally required off-duty, uninterrupted thirty
16 (30) minute meal breaks and the legally required off-duty rest breaks;
17 and,
- 18 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
19 and the CALIFORNIA LABOR SUB-CLASS members with necessary
20 expenses incurred in the discharge of their job duties; and,
- 21 (g) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
22 when an employee is discharged or quits from employment, the
23 employer must pay the employee all wages due without abatement, by
24 failing to tender full payment and/or restitution of wages owed or in the
25 manner required by California law to the members of the
26 CALIFORNIA LABOR SUB-CLASS who have terminated their
27 employment.
28

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

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

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

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

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

1 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
2 CLASS Members.

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

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

- 9 1) Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA LABOR SUB-CLASS which
11 would establish incompatible standards of conduct for the
12 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
13 2) Adjudication with respect to individual members of the
14 CALIFORNIA LABOR SUB-CLASS which would as a
15 practical matter be dispositive of interests of the other members
16 not party to the adjudication or substantially impair or impede
17 their ability to protect their interests.

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

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

1 CLASS Members, and a Class Action is superior to other available
2 methods for the fair and efficient adjudication of the controversy,
3 including consideration of:

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

1 Action is the only means to assert their claims through a
2 representative; and,

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

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

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

1 and other improprieties, and in obtaining adequate compensation for
2 the damages and injuries which DEFENDANT's actions have inflicted
3 upon the CALIFORNIA LABOR SUB-CLASS;

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

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

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

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

20
21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

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

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

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

3 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
4 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,
11 as may be necessary to prevent the use or employment by any person of any
12 practice which constitutes unfair competition, as defined in this chapter, or as
13 may be necessary to restore to any person in interest any money or property,
14 real or personal, which may have been acquired by means of such unfair
15 competition.

16 Cal. Bus. & Prof. Code § 17203.

17 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
18 engage in a business practice which violates California law, including but not limited to, the
19 applicable Industrial Wage Order(s), the California Code of Regulations and the California
20 Labor Code including Sections 204, 210, 221, 226.7, 246, 351, 510, 512, 1194, 1197,
21 1197.1, 1198 & 2802, the Fair Labor Standards Act and federal regulations promulgated
22 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
23 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
24 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

1 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
2 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
3 meal and rest periods, the required amount of compensation for missed meal and rest
4 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
5 reimburse all necessary business expenses incurred, due to a business practice that cannot be
6 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
7 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court
8 should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
9 including restitution of wages wrongfully withheld.

10 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
11 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and
12 the other members of the CALIFORNIA CLASS to be underpaid during their employment
13 with DEFENDANT.

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

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

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

26 54. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and
28 the other members of the CALIFORNIA CLASS, including earned wages for all time

1 worked, and has deprived them of valuable rights and benefits guaranteed by law and
2 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
3 allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

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

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

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SECOND CAUSE OF ACTION

5

For Failure To Pay Minimum Wages

6

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

7

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

8

and Against All Defendants)

9

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

12

60. 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 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

17

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

19

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

22

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

25

64. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's policy and practice was to

28

1 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS.

3 65. DEFENDANT's unlawful wage and hour practices manifested, without
4 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
5 implementing a policy and practice that denies accurate compensation to PLAINTIFF and
6 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
7 wage pay.

8 66. In committing these violations of the California Labor Code, DEFENDANT
9 inaccurately calculated the correct time worked and consequently underpaid the actual time
10 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
11 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
12 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
13 requirements and other applicable laws and regulations.

14 67. As a direct result of DEFENDANT's unlawful wage practices as alleged
15 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
16 not receive the correct minimum wage compensation for their time worked for
17 DEFENDANT.

18 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
19 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
20 Members to work without paying them for all the time they were under DEFENDANT's
21 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
22 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
23 that they were entitled to, constituting a failure to pay all earned wages.

24 69. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for the true time they worked, PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
28

1 economic injury in amounts which are presently unknown to them and which will be
2 ascertained according to proof at trial.

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

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

18 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS therefore request recovery of all unpaid wages, including overtime wages,
20 according to proof, interest, statutory costs, as well as the assessment of any statutory
21 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or
22 other applicable statutes. To the extent overtime compensation is determined to be owed to
23 the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
24 DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore these
25 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
26 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
27 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
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1 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
2 are entitled to seek and recover statutory costs.

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8 **THIRD CAUSE OF ACTION**

9 **For Failure To Pay Overtime Compensation**

10 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

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

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

24 76. Cal. Lab. Code § 510 further provides that employees in California shall not
25 be employed more than eight (8) hours per workday and more than forty (40) hours per
26 workweek unless they receive additional compensation beyond their regular wages in
27 amounts specified by law.
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1 77. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
2 wages, including minimum wage and overtime compensation and interest thereon, together
3 with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
4 employee for longer hours than those fixed by the Industrial Welfare Commission is
5 unlawful.

6 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
8 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
9 including overtime work.

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

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

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

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

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

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

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

24 86. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
26 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
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1 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

24
25 **FOURTH CAUSE OF ACTION**

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

27 **[Cal. Lab. Code §§ 226.7 & 512]**
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(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

89. 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.

90. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed 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 did 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 were 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 from time to time. Further, DEFENDANT failed 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 from time to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

91. 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 were 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.

1 92. As a proximate result of the aforementioned violations, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
3 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
4 suit.

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11 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

12 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 2802]**

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

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

20 98. Cal. Lab. Code § 2802 provides, in relevant part, that:

21 An employer shall indemnify his or her employee for all necessary
22 expenditures or losses incurred by the employee in direct consequence of the
23 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.

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

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

17 **SEVENTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code § 226]**

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

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

25 102. Cal. Labor Code § 226 provides that an employer must furnish employees with
26 an "accurate itemized" statement in writing showing:

27 (1) gross wages earned,
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1 (2) total hours worked by the employee, except for any employee whose
2 compensation is solely based on a salary and who is exempt from payment of
3 overtime under subdivision (a) of Section 515 or any applicable order of the
4 Industrial Welfare Commission,
5 (3) the number of piecerate units earned and any applicable piece rate if the employee
6 is paid on a piece-rate basis,
7 (4) all deductions, provided that all deductions made on written orders of the
8 employee may be aggregated and shown as one item,
9 (5) net wages earned,
10 (6) the inclusive dates of the period for which the employee is paid,
11 (7) the name of the employee and his or her social security number, except that by
12 January 1, 2008, only the last four digits of his or her social security number or an
13 employee identification number other than a social security number may be shown on
14 the itemized statement,
15 (8) the name and address of the legal entity that is the employer, and
16 (9) all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee.

10 103. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
12 wage statements which failed to show, among other things, the correct gross and net wages
13 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
14 employees with an accurate itemized wage statement in writing showing, among other
15 things, gross wages earned and all applicable hourly rates in effect during the pay period and
16 the corresponding amount of time worked at each hourly rate. PLAINTIFF and
17 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
18 wage statements should reflect all applicable hourly rates during the pay period and the total
19 hours worked, and the applicable pay period in which the wages were earned pursuant to
20 California Labor Code Section 226(a). PLAINTIFF and CALIFORNIA CLASS Members
21 were paid on an hourly basis. As such, the wage statements should reflect all applicable
22 hourly rates during the pay period and the total hours worked, and the applicable pay period
23 in which the wages were earned pursuant to California Labor Code Section 226(a). The
24 wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS
25 Members failed to identify such information. PLAINTIFF and CALIFORNIA CLASS
26 Members were paid on an hourly basis. As such, the wage statements should reflect all
27 applicable hourly rates during the pay period and the total hours worked, and the applicable
28 pay period in which the wages were earned pursuant to California Labor Code Section

1 226(a)(2). The wage statements DEFENDANT provided to PLAINTIFF and other
2 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
3 wage statements failed to identify the accurate total hours worked each pay period. Aside,
4 from the violations listed above in this paragraph, DEFENDANT failed to issue to
5 PLAINTIFF an itemized wage statement that lists all the requirements under California
6 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF
7 and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements
8 which violated Cal. Lab. Code § 226.

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

21
22 **EIGHTH CAUSE OF ACTION**

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

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

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

1 105. 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.

4 106. Cal. Lab. Code § 200 states that:

5 As used in this article:

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

7 (b) "Labor" includes labor, work, or service whether rendered or
8 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.

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

12 108. Cal. Lab. Code § 202 states, in relevant part, that:

13 If an employee not having a written contract for a definite period quits his
14 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
15 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
16 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
17 requests and designates a mailing address. The date of the mailing shall
constitute the date of payment for purposes of the requirement to provide
18 payment within 72 hours of the notice of quitting.

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

21 110. Cal. Lab. Code § 203 states:

22 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
23 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
24 or until an action therefor is commenced; but the wages shall not continue
for more than 30 days.

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

5 112. The employment of PLAINTIFF and many other CALIFORNIA LABOR
6 SUB-CLASS Members has terminated, yet as to those individuals whose employment
7 terminated, DEFENDANTS did not timely tender payment of all wages owed as required by
8 law.

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

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16
PRAYER FOR RELIEF

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

19 1. On behalf of the CALIFORNIA CLASS:

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

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

5 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
6 Causes Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
7 action pursuant to Cal. Code of Civ. Proc. § 382;

8 B) Compensatory damages, according to proof at trial, including compensatory
9 damages for minimum and overtime compensation due PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
11 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
12 statutory rate;

13 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
14 in which a violation occurs and one hundred dollars (\$100) per each member of
15 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 an award of costs for violation of Cal. Lab. Code § 226;

18 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
19 the applicable IWC Wage Order;

20 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
21 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
22 costs of suit; and,

23 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
24 1197; and,

25 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
26 CLASS as a penalty from the due date thereof at the same rate until paid or until
27 an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

28 3. On all claims:

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- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

Dated: June 25, 2021 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: June 25, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff