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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 22 2023

BY Jessica Gonzalez
JESSICA GONZALEZ, DEPUTY

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

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

9 VICTOR HERNANDEZ, on behalf of himself and on
behalf of all persons similarly situated and on behalf of
10 the State of California as private attorney general,

11 Plaintiff,

12 vs.

13 MITSUBISHI CEMENT CORPORATION, a
14 Corporation; and DOES 1 through 50, inclusive,

15 Defendants.

Case No. CIVSB2125260

Consolidated with Case No: CIVSB2133252

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;
9. CONSTRUCTIVE DISCHARGE AND OTHER ADVERSE EMPLOYMENT ACTIONS IN VIOLATION OF PUBLIC POLICY;
10. 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, 227.3, 246 *et seq.*, 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)

DEMAND FOR A JURY TRIAL

RECEIVED

MAR 22 2023

SUPERIOR COURT OF CALIFORNIA
SAN BERNARDINO COUNTY

1 Plaintiff Victor Hernandez ("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 Mitsubishi Cement Corporation ("DEFENDANT") is a 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 manufactures all of the major types of Portland and Specialty
10 cement.

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

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT and classified
17 as hourly non-exempt employees (the "CALIFORNIA CLASS") from August 11, 2017 through
18 the earlier of an order approving Plaintiff's motion for preliminary approval or April 16, 2023.
19 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
20 of CALIFORNIA CLASS Members is under five million dollars (\$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 is 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 **THE CONDUCT**

22
23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
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 from time to time while they were clocked out
28 for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF

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

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

break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period from time to time in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

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

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

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

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

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

28 16. DEFENDANT underpaid sick pay wages to PLAINTIFF and other

1 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay.
2 Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
3 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
4 pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

5 17. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
6 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
7 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
8 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
9 2802, employers are required to indemnify employees for all expenses incurred in the course
10 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
12 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
13 directions of the employer, even though unlawful, unless the employee, at the time of obeying
14 the directions, believed them to be unlawful."

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

27 19. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as

a matter of company policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods. This policy and practice of DEFENDANT is intended to purposefully avoid the payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

21. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business records. DEFENDANT also required PLAINTIFF to work off the clock without paying

1 PLAINTIFF for all the time PLAINTIFF was working for DEFENDANT, specifically by
2 failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT
3 expected PLAINTIFF to complete on a daily and/or weekly basis. The amount in controversy
4 for PLAINTIFF individually does not exceed the sum or value of \$75,000. To date,
5 DEFENDANT has not fully paid PLAINTIFF for all PLAINTIFF's wages still owed to
6 PLAINTIFF or any penalties owed to PLAINTIFF under California Labor Code § 203.

7 22. In or around March of 2021 and April of 2021, and continuing throughout the rest
8 of PLAINTIFF's employment, PLAINTIFF engaged in protected activity by complaining to
9 DEFENDANT of DEFENDANT's illegal employment practices, including, but not limited to,
10 DEFENDANT's failure to pay PLAINTIFF proper wages under the California Labor Code and
11 DEFENDANT's repeated pressure on PLAINTIFF to falsify air quality record documents,
12 known as "Method 22" forms in order to pass air quality tests as to not run afoul of the rules and
13 regulations as set forth by the Mine Safety Health Administration.

14 23. Subsequent to PLAINTIFF's participation in protective activity by complaining
15 to DEFENDANT of DEFENDANT's unlawful employment practices in or around March of
16 2021 and April of 2021, and continuing throughout the rest of PLAINTIFF's employment,
17 DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against
18 PLAINTIFF. Specifically, after PLAINTIFF complained to his supervisor(s) of
19 DEFENDANT's unlawful employment practices, DEFENDANT demoted PLAINTIFF in job
20 title and pay and made PLAINTIFF feel uncomfortable to come to work. On or around April
21 21, 2021, PLAINTIFF made the decision to resign from his employment due to the hostile and
22 discriminatory environment described above. As a result, there is a causal link between the
23 protected activity and DEFENDANT's constructive discharge of PLAINTIFF's employment,
24 which is against public policy. Prior to filing this action, PLAINTIFF exhausted his
25 administrative remedies by filing a timely administrative complaint with the Department of Fair
26 Employment and Housing ("DFEH") and received a DFEH right-to-sue letter on July 9, 2021.

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

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

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

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

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

Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

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

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

1 PLAINTIFF and the members of the CALIFORNIA CLASS that would
2 make class certification inappropriate. Counsel for the CALIFORNIA
3 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
4 Members.

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

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

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

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

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

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

practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

maintained as a Class Action;

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

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

THE CALIFORNIA LABOR SUB-CLASS

36. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed DEFENDANT in California (the

1 "CALIFORNIA LABOR SUB-CLASS") from August 11, 2017 through the earlier of an order
2 approving Plaintiff's motion for preliminary approval or April 16, 2023 (the "CALIFORNIA
3 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
4 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
5 five million dollars (\$5,000,000.00).

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

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

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

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

- 27 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
28 compensation due to members of the CALIFORNIA LABOR SUB-

1 CLASS for missed meal and rest breaks in violation of the California
2 Labor Code and California regulations and the applicable California Wage
3 Order;

4 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with accurate
6 itemized wage statements;

7 (c) Whether DEFENDANT has engaged in unfair competition by the
8 above-listed conduct;

9 (d) The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUB-CLASS; and,

11 (e) Whether DEFENDANT's conduct was willful.

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

14 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
15 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
16 CLASS all wages due for overtime worked, for which DEFENDANT is
17 liable pursuant to Cal. Lab. Code § 1194;

18 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
19 accurately pay PLAINTIFF and the members of the CALIFORNIA
20 LABOR SUB-CLASS the correct minimum wage pay for which
21 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

22 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
23 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
24 itemized statement in writing showing the corresponding correct amount
25 of wages earned by the employee; and,

26 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28 CLASS with all legally required off-duty, uninterrupted thirty (30) minute

meal breaks and the legally required off-duty rest breaks;

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

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, is a non-exempt employee paid on an hourly basis who has been subjected to the DEFENDANT's practice and policy which fails to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,
- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action

litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

(c) Common questions of law and fact predominate as to the members of the

CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

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

1 with DEFENDANT or with a subsequent employer, the Class
2 Action is the only means to assert their claims through a
3 representative; and,

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

9 44. This Court should permit this action to be maintained as a Class Action pursuant
10 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 and
15 efficient adjudication of the claims of the members of the CALIFORNIA
16 LABOR SUB-CLASS because in the context of employment litigation a
17 substantial number of individual CALIFORNIA LABOR SUB-CLASS
18 Members will avoid asserting their rights individually out of fear of
19 retaliation or adverse impact on their employment;
- 20 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
21 numerous that it is impractical to bring all members of the CALIFORNIA
22 LABOR SUB-CLASS before the Court;
- 23 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
24 Members, will not be able to obtain effective and economic legal redress
25 unless the action is maintained as a Class Action;
- 26 (e) There is a community of interest in obtaining appropriate legal and
27 equitable relief for the acts of unfair competition, statutory violations and
28 other improprieties, and in obtaining adequate compensation for the

damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

46. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

1 47. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
2 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
3 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
4 competition as follows:

5 Any person who engages, has engaged, or proposes to engage in unfair
6 competition may be enjoined in any court of competent jurisdiction. The court
7 may make such orders or judgments, including the appointment of a receiver, as
8 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.

9 Cal. Bus. & Prof. Code § 17203.

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

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

23 50. By the conduct alleged herein, DEFENDANT's practices are deceptive and
24 fraudulent in that DEFENDANT's policy and practice fails to provide the legally mandated
25 meal and rest periods, and the required amount of compensation for missed meal and rest
26 periods, reporting time pay, and overtime and minimum wages owed, and Fair Labor Standards
27 Act overtime wages due for overtime worked as a result of failing to include non-discretionary
28 incentive compensation into their regular rate for purposes of computing the proper overtime

1 pay, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
2 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
3 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
4 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

27 56. All the acts described herein as violations of, among other things, the Industrial
28 Welfare Commission Wage Orders, the California Code of Regulations, and the California

1 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
2 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
3 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

20
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

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

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

61. 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 reporting time and minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

62. 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.

63. 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.

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

65. DEFENDANT maintains 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 is to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

26 72. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
28 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 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 workweek.

76. 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.

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

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

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

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

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

27 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
28 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by

1 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
2 including overtime work.

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

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

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

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

24 87. 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 amount of time they worked, PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
28 injury in amounts which are presently unknown to them and which will be ascertained

1 according to proof at trial.

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

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

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

22 **FOURTH CAUSE OF ACTION**

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

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

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

27 91. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
28

1 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
2 of this Complaint.

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

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

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

28 ///

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

95. 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.

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

99. 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.

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

(1) gross wages earned,

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

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

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

(5) net wages earned,

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

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

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

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

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

20 102. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code
21 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
22 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended
23 calculating the correct wages for all missed meal and rest breaks and the amount of employment
24 taxes which were not properly paid to state and federal tax authorities. These damages are
25 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
26 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
27 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
28 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according

1 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
2 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

3
4 **SEVENTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 2802]**

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

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

12 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

13 An employer shall indemnify his or her employee for all necessary expenditures
14 or losses incurred by the employee in direct consequence of the discharge of his
15 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.

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

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

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

9 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

18 As used in this article:

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

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

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

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

If an employee not having a written contract for a definite period quits his
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
previous notice of his or her intention to quit, in which case the employee

1 is entitled to his or her wages at the time of quitting. Notwithstanding any
2 other provision of law, an employee who quits without providing a 72-
3 hour notice shall be entitled to receive payment by mail if he or she so
4 requests and designates a mailing address. The date of the mailing shall
5 constitute the date of payment for purposes of the requirement to provide
6 payment within 72 hours of the notice of quitting.

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

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

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

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

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

26 **NINTH CAUSE OF ACTION**

27 **Constructive Discharge And Other Adverse Employment 28 Actions in Violation of Public Policy**

(By PLAINTIFF Against All Defendants)

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

116. Throughout PLAINTIFF's employment, PLAINTIFF was the recipient of
ethnic/racial discrimination. PLAINTIFF is a Hispanic American who endured a toxic work
environment due to these characteristics. Additionally, in or around March of 2021 and
April of 2021, and continuing throughout the rest of PLAINTIFF's employment,

1 PLAINTIFF engaged in protected activity by complaining to DEFENDANT of
2 DEFENDANT's illegal employment practices, including, but not limited to,
3 DEFENDANT's failure to pay PLAINTIFF proper wages under the California Labor Code
4 and DEFENDANT's repeated pressure on PLAINTIFF to falsify air quality record
5 documents, known as "Method 22" forms in order to pass air quality tests as to not run afoul
6 of the rules and regulations as set forth by the Mine Safety Health Administration.

7 117. Subsequent to PLAINTIFF's participation in protective activity by
8 complaining to DEFENDANT of DEFENDANT's unlawful employment practices in or
9 around March of 2021 and April of 2021, and continuing throughout the rest of
10 PLAINTIFF's employment, DEFENDANT subjected PLAINTIFF to adverse employment
11 actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF complained to
12 his supervisor(s) of DEFENDANT's unlawful employment practices, DEFENDANT
13 demoted PLAINTIFF in job title and pay and made PLAINTIFF feel uncomfortable to come
14 to work. On or around April 21, 2021, PLAINTIFF made the decision to resign from his
15 employment due to the hostile and discriminatory environment described above. As a
16 result, there is a causal link between the protected activity and DEFENDANT's constructive
17 discharge of PLAINTIFF's employment, which is against public policy. At all times hereto,
18 the California Government Code Section 12940(a), was in full force and effect and was
19 binding upon DEFENDANT. This subsection precludes an employer because of the
20 race/national origin/ethnicity, to refuse to hire or employ the person or to refuse to select the
21 person for a training program leading to employment, or to bar or discharge the person from
22 employment, or to discriminate against the person in compensation or in terms, conditions,
23 or privileges of employment.

24 118. DEFENDANT through their officers, directors, managing agents, and
25 supervisory employees, intentionally created and knowingly permitted working conditions
26 to exist that were so intolerable that a reasonable person in PLAINTIFF's position would
27 have had no reasonable alternative except to resign. These working conditions began
28 because PLAINTIFF engaged in the protected activity described in paragraphs #117 and
#117 herein. By, inter alia, discriminating against PLAINTIFF because of PLAINTIFF's
complaints of illegality, DEFENDANT violated the fundamental public policies of the State

1 of California. PLAINTIFF's anxiety and stress from the incidents occurring at
2 DEFENDANT's work site was so substantial that he was unable to return to work especially
3 because his manager was still pressuring him to falsify safety audits as it pertained to the
4 "Method 22" air quality test.

5 119. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial
6 losses in earnings, future earning capacity, and employment benefits and emotional distress
7 in an amount to be determined according to proof at trial.

8 120. In doing the acts herein alleged, DEFENDANT acted with malice and
9 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is
10 entitled to exemplary and punitive damages from DEFENDANT in an amount to be
11 determined to punish DEFENDANT and to deter such wrongful conduct in the future.

12 **TENTH CAUSE OF ACTION**

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

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

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

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

18 122. PAGA is a mechanism by which the State of California itself can enforce state
19 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
20 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
21 fundamentally a law enforcement action designed to protect the public and not to benefit private
22 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
23 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
24 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
25 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
26 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
27 subject to arbitration.
28

1 123. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, brings this Representative Action on behalf of the State of California with respect to
4 himself and all individuals who are or previously were employed by DEFENDANT in
5 California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
6 during the time period of September 13, 2020 through the earlier of an order approving
7 Plaintiff's motion for preliminary approval or April 16, 2023 (the "PAGA PERIOD").
8

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

17 125. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
20 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
21 to pay overtime and sick pay wages, (e) failed to reimburse employees for required expenses,
22 and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
23 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*,
24 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
25 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby
26 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of
27

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

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

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

9
10 **PRAYER FOR RELIEF**
11

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

14 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 B) Compensatory damages, according to proof at trial, including compensatory
2 damages for minimum and overtime compensation due PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
4 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
5 statutory rate;
- 6 C) Meal and rest period compensation pursuant to California Labor Code Section
7 226.7 and the applicable IWC Wage Order;
- 8 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 9 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
15 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
16 costs of suit; and,
- 17 G) The wages of all terminated employees in the CALIFORNIA LABOR
18 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
19 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 20 3. On behalf of PLAINTIFF for the Ninth cause of action:
- 21 A) Compensatory damages, according to proof at trial, but in excess of
22 \$25,000.
- 23 B) Special and General damages according to proof;
- 24 C) Statutory damages, penalties and attorney's fees;
- 25 D) For punitive damages in an amount necessary to make an example of and to
26 punish DEFENDANT and deter DEFENDANT from engaging in future similar
27 conduct;
- 28 E) For loss of earnings (both past and future); and,
- F) For interest at the legal rate in an amount according to proof.

1 4. On behalf of the State of California and with respect to all AGGRIEVED
2 EMPLOYEES:

3 A) Recovery of civil penalties as prescribed by the Labor Code Private
4 Attorneys General Act of 2004; and,

5 B) An award of attorneys' fees and cost of suit, as allowable under the
6 law, including, but not limited to, pursuant to Labor Code §2699.

7 5. On all claims:

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

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

10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
11 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
12 §2802.

13 Dated: March 22, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

16 By: /s/ Nicholas J. De Blouw
17 Nicholas J. De Blouw
18 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 22, 2023 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

VICTOR HERNANDEZ, on behalf of himself
and on behalf of all persons similarly situated,

Plaintiff,

vs.

MITSUBISHI CEMENT CORPORATION, a
Corporation; and Does 1 through 50, inclusive,

Defendants.

Case No. CIVSB2125260

Consolidated with Case No: CIVSB2133252

PROOF OF SERVICE

Action Filed: August 11, 2021

1 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

2 I, Heather Drosi, am a citizen of the United States and a resident of the State of California.
3 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a
4 party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On
5 March 22, 2023, I served the document(s) described as:

6 **I. CONSOLIDATED CLASS ACTION COMPLAINT.**

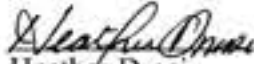
7 XX (BY ELECTRONIC SERVICE): I provided the documents referenced above electronically
8 via electronic mail to counsel for Defendants at the following e-mail address(es):

9 Paige T. Bennett
10 Paige.Bennett@jacksonlewis.com
11 Michael R. Minguet
12 Michael.Minguet@jacksonlewis.com
13 Judy Kang
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15 Frankie Larsen
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JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5408
Telephone: (213) 689-0404
Facsimile: (213) 689-0430

17 X (State): I declare under penalty of perjury under the laws of the State of California that the
18 above is true and correct.

19 Executed on March 22, 2023, at San Diego, California.

20
21 
Heather Drosi