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Sherri R. Carter, Executive Officer / Clerk of Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SALVADOR VENEGAS and SERGIO
LAINEZ, on behalf of themselves and on
behalf of all persons similarly situated,
and on behalf of the State of California, as
private attorney generals,

Plaintiffs,

vs.

WWF OPERATING COMPANY, LLC, a
Limited Liability Company; DANONE
NORTH AMERICA PUBLIC BENEFIT
CORPORATION, a Corporation; DANONE
US, LLC, a Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Lead Case No.: 21STCV20991

[Related Case: 21PSCV00643]

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

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

DEMAND FOR A JURY TRIAL

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1 Plaintiffs Salvador Venegas and Sergio Lainez (“PLAINTIFFS”) individuals, on behalf
2 of themselves and all other similarly situated current and former employees allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant WWF Operating Company, LLC is a limited liability company that at all
8 relevant times mentioned herein conducted and continues to conduct substantial business in the
9 state of California.

10 2. Defendant Danone North America Public Benefit Corporation is a corporation that
11 at all relevant times mentioned herein conducted and continues to conduct substantial business
12 in the state of California.

13 3. Defendant Danone US, LLC is a limited liability company that at all relevant times
14 mentioned herein conducted and continues to conduct substantial business in the state of
15 California.

16 4. Defendants WWF Operating Company, LLC, Danone North America Public
17 Benefit Corporation and Danone US, LLC were the joint employers of PLAINTIFFS as
18 evidenced by paycheck and by the company PLAINTIFFS performed work for respectively, and
19 are therefore jointly responsible as employers for the conduct alleged herein, and are therefore
20 collectively referred to herein as "DEFENDANT."

21 5. Plaintiff Venegas was employed by DEFENDANT from April of 2016 to
22 December of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
23 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
24 of minimum and overtime wages due for all time worked.

25 6. Plaintiff Lainez was employed by DEFENDANT from September 2001 to
26 February 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid
27 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
28 minimum and overtime wages due for all time worked.

1 7. PLAINTIFFS bring this Class Action on behalf of themselves and a California
2 class, defined as all individuals who are or previously were employed by Defendants WWF
3 Operating Company, LLC; Danone North America Public Benefit Corporation; and, Danone
4 US, LLC in California who were classified as hourly, non-exempt employees (the
5 “CALIFORNIA CLASS”) during the period June 4, 2017 to August 5, 2022 (the
6 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
7 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

8 8. PLAINTIFFS bring this Class Action on behalf of themselves and a
9 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
10 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and
11 practice which failed to lawfully compensate these employees. DEFENDANT’s policy and
12 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
13 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members
14 of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
15 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
16 named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
17 economically injured by DEFENDANT’s past and current unlawful conduct, and all other
18 appropriate legal and equitable relief.

19 9. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
21 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
22 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
23 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
24 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
25 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
26 inclusive, are responsible in some manner for one or more of the events and happenings that
27 proximately caused the injuries and damages hereinafter alleged.

28 10. The agents, servants and/or employees of the Defendants and each of them acting

1 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
2 agent, servant and/or employee of the Defendants, and personally participated in the conduct
3 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
4 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
5 all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
7 Defendants' agents, servants and/or employees.

8 9 THE CONDUCT

10 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
11 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
12 meaning the time during which an employee is subject to the control of an employer, including
13 all the time the employee is suffered or permitted to work. DEFENDANT required
14 PLAINTIFFS and CALIFORNIA CLASS Members to work from time to time while they were
15 clocked out for what was supposed to be their off duty meal break. DEFENDANT required
16 PLAINTIFFS and the CALIFORNIA CLASS Members to work off the clock without paying
17 them for all the time they performed duties while on their meal break, specifically by failing to
18 provide enough labor hours to accomplish all the job tasks that DEFENDANT expected
19 PLAINTIFFS and CALIFORNIA CLASS Members to complete on a daily and/or weekly basis.
20 Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFFS and
21 CALIFORNIA CLASS Members to perform work off the clocking that DEFENDANT, as a
22 condition of employment, required these employees to wait in line and submit to mandatory
23 temperature checks for COVID-19 screening prior to clocking into DEFENDANT's
24 timekeeping system for the workday. Further, PLAINTIFFS and other members of the
25 CALIFORNIA CLASS from time to time were not paid wages for all time worked, including
26 overtime wages, such that in the aggregate employees were underpaid wages as a result of
27 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. As
28 a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and

1 overtime compensation by from time to time working without their time being accurately
2 recorded and without compensation at the applicable minimum wage and overtime rates.
3 DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS
4 Members for all time worked is evidenced by DEFENDANT's business records.

5 12. As a result of their rigorous work schedules, PLAINTIFFS and other
6 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
7 breaks and were not fully relieved of duty for meal periods. PLAINTIFFS and other
8 CALIFORNIA CLASS Members were from time to time required to perform work as ordered
9 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
10 break. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS
11 Members with a second off-duty meal period from time to time in which these employees were
12 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFFS and
13 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
14 compensation and in accordance with DEFENDANT's corporate policy and practice.

15 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
16 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
17 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
18 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
19 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
20 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
21 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
22 or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also
23 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
24 PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time denied their
25 proper rest periods by DEFENDANT and DEFENDANT's managers. Additionally, the
26 applicable California Wage Order requires employers to provide employees with off-duty rest
27 periods, which the California Supreme Court defined as time during which an employee is
28 relieved from all work related duties and free from employer control. In so doing, the Court

1 held that the requirement under California law that employers authorize and permit all
2 employees to take rest period means that employers must relieve employees of all duties and
3 relinquish control over how employees spend their time which includes control over the
4 locations where employees may take their rest period. Employers cannot impose controls that
5 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
6 DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA CLASS Members
7 from unconstrained walks and was unlawful based on DEFENDANT's rule which stated
8 PLAINTIFFS and other CALIFORNIA CLASS Members could not leave the work premises
9 during their rest period.

10 14. State law provides that employees must be paid overtime at one-and-one-half
11 times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members
12 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
13 employee's performance.

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

28 16. DEFENDANT also failed to provide PLAINTIFFS and the other members of the

1 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
2 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
3 every employer shall furnish each of his or her employees with an accurate itemized wage
4 statement in writing showing, among other things, gross wages earned and all applicable hourly
5 rates in effect during the pay period and the corresponding amount of time worked at each
6 hourly rate. Aside, from the violations listed above, DEFENDANT failed to issue to
7 PLAINTIFFS 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 PLAINTIFFS and the
9 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
10 Code § 226.

11 17. 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 PLAINTIFFS 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 18. 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 PLAINTIFFS and other
21 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
22 payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
23 all aspects of the deductions from compensation payable to PLAINTIFFS 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. PLAINTIFFS 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 19. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other

1 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay.
2 Specifically, PLAINTIFFS 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 PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

5 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
6 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
7 incurred by PLAINTIFFS 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 21. In the course of their employment PLAINTIFFS 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 the
19 cost associated with the use of their personal cellular phones for DEFENDANT's benefit.
20 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
21 DEFENDANT to use their personal cellular phones to respond to managers while off the clock
22 (which also results in minimum wage and overtime violations). As a result, in the course of
23 their employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
24 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
25 related to the use of their personal cellular phones all on behalf of and for the benefit of
26 DEFENDANT.

27 22. 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

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

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

20 24. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
21 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage
22 Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due
23 to PLAINTIFFS. DEFENDANT did not have a policy or practice which provided timely off-
24 duty meal and rest breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for
25 PLAINTIFFS’ missed meal and rest breaks. The nature of the work performed by the
26 PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS’ duties
27 for the legally required off-duty meal periods. As a result, DEFENDANT’s failure to provide
28 PLAINTIFFS with the legally required meal periods is evidenced by DEFENDANT’s business

1 records. DEFENDANT also required PLAINTIFFS to work off the clock without paying
2 PLAINTIFFS for all the time PLAINTIFFS were working for DEFENDANT, specifically by
3 failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT
4 expected PLAINTIFFS to complete on a daily and/or weekly basis. The amount in controversy
5 for PLAINTIFFS individually does not exceed the sum or value of \$75,000. To date,
6 DEFENDANT has not fully paid PLAINTIFFS for all PLAINTIFFS' wages still owed to
7 PLAINTIFFS or any penalties owed to PLAINTIFFS under California Labor Code § 203.

8 9 **JURISDICTION AND VENUE**

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

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

20 21 **THE CALIFORNIA CLASS**

22 27. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
25 all individuals who are or previously were employed by Defendants WWF Operating Company,
26 LLC; Danone North America Public Benefit Corporation; and, Danone US, LLC in California
27 who were classified as hourly, non-exempt employees (the "CALIFORNIA CLASS") during
28 the period June 4, 2017 to August 5, 2022 (the "CALIFORNIA CLASS PERIOD"). The

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

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

6 29. 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 record all meal and rest breaks
10 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
11 DEFENDANT enjoys the benefit of this work, requires employees to perform this work and
12 permits or suffers to permit this work.

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

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

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

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

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

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

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

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

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

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

21 (c) The claims of the representative PLAINTIFFS are typical of the claims of
22 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
23 other members of the CALIFORNIA CLASS, are classified as non-
24 exempt employees paid on an hourly basis who has been subjected to the
25 DEFENDANT's deceptive practice and policy which failed to provide the
26 legally required meal and rest periods to the CALIFORNIA CLASS and
27 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA
28 CLASS. PLAINTIFFS sustained economic injury as a result of

1 DEFENDANT's employment practices. PLAINTIFFS and the members
2 of the CALIFORNIA CLASS were and are similarly or identically harmed
3 by the same unlawful, deceptive, unfair and pervasive pattern of
4 misconduct engaged in by DEFENDANT; and,

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

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

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

- 19 1) Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA CLASS which would establish
21 incompatible standards of conduct for the parties opposing the
22 CALIFORNIA CLASS; and/or,
23 2) Adjudication with respect to individual members of the
24 CALIFORNIA CLASS which would as a practical matter be
25 dispositive of interests of the other members not party to the
26 adjudication or substantially impair or impede their ability to
27 protect their interests.

- 28 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to

1 act on grounds generally applicable to the CALIFORNIA CLASS, making
2 appropriate class-wide relief with respect to the CALIFORNIA CLASS
3 as a whole in that DEFENDANT failed to pay all wages due to members
4 of the CALIFORNIA CLASS as required by law;

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

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

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

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

28 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;

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

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

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

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial

1 number of individual CALIFORNIA CLASS Members will avoid
2 asserting their rights individually out of fear of retaliation or adverse
3 impact on their employment;

4 (c) The members of the CALIFORNIA CLASS are so numerous that it is
5 impractical to bring all members of the CALIFORNIA CLASS before the
6 Court;

7 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
8 able to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

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

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

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

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

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

27 36. DEFENDANT maintains records from which the Court can ascertain and identify
28 by job title each of DEFENDANT's employees who have been intentionally subjected to

1 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS
2 will seek leave to amend the Complaint to include any additional job titles of similarly situated
3 employees when they have been identified.

4
5 **THE CALIFORNIA LABOR SUB-CLASS**

6 37. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
7 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
8 CALIFORNIA CLASS who are or previously were employed Defendants WWF Operating
9 Company, LLC; Danone North America Public Benefit Corporation; and, Danone US, LLC in
10 California who were classified as hourly, non-exempt employees (the "CALIFORNIA LABOR
11 SUB-CLASS") during the period June 4, 2017 to August 5, 2022 (the "CALIFORNIA LABOR
12 SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
13 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
14 dollars (\$5,000,000.00).

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

27 39. DEFENDANT maintains records from which the Court can ascertain and identify
28 by name and job title, each of DEFENDANT's employees who have been intentionally

1 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
2 PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of
3 similarly situated employees when they have been identified.

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

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

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

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

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

LABOR SUB-CLASS the correct minimum wage pay for which
DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

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

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

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

43. 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 PLAINTIFFS are typical of the claims of
each member of the CALIFORNIA LABOR SUB-CLASS.
PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
SUB-CLASS, are non-exempt employees paid on an hourly basis who
have been subjected to the DEFENDANT's practice and policy which

1 fails to pay the correct amount of wages due to the CALIFORNIA
2 LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a
3 result of DEFENDANT's employment practices. PLAINTIFFS and the
4 members of the CALIFORNIA LABOR SUB-CLASS were and are
5 similarly or identically harmed by the same unlawful, deceptive, unfair
6 and pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

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

1 protect their interests.

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

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

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

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

25 A. Inconsistent or varying adjudications with respect to
26 individual members of the CALIFORNIA LABOR SUB-
27 CLASS, which would establish incompatible standards of
28 conduct for the DEFENDANT; and/or,

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

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

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

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

20 (a) The questions of law and fact common to the CALIFORNIA LABOR
21 SUB-CLASS predominate over any question affecting only individual
22 CALIFORNIA LABOR SUB-CLASS Members;

23 (b) A Class Action is superior to any other available method for the fair and
24 efficient adjudication of the claims of the members of the CALIFORNIA
25 LABOR SUB-CLASS because in the context of employment litigation a
26 substantial number of individual CALIFORNIA LABOR SUB-CLASS
27 Members will avoid asserting their rights individually out of fear of
28 retaliation or adverse impact on their employment;

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

28 ///

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

5 46. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

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

10 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver, as
17 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.

18 Cal. Bus. & Prof. Code § 17203.

19 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California
22 Labor Code including Sections 204, 210, 221, 226.7, 246, 248.5, 510, 512, 1194, 1197, 1197.1,
23 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder,
24 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
25 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
26 unfair competition, including restitution of wages wrongfully withheld.

27 50. By the conduct alleged herein, DEFENDANT’s practices are unlawful and unfair
28 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous

1 or substantially injurious to employees, and are without valid justification or utility for which
2 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
3 California Business & Professions Code, including restitution of wages wrongfully withheld.

4 51. By the conduct alleged herein, DEFENDANT's practices are deceptive and
5 fraudulent in that DEFENDANT's policy and practice fails to provide the legally mandated
6 meal and rest periods, and the required amount of compensation for missed meal and rest
7 periods, reporting time pay, and overtime and minimum wages owed, and Fair Labor Standards
8 Act overtime wages due for overtime worked as a result of failing to include non-discretionary
9 incentive compensation into their regular rate for purposes of computing the proper overtime
10 pay, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
11 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
12 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
13 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

14 52. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
15 and deceptive in that DEFENDANT's employment practices cause PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS to be underpaid during their employment with
17 DEFENDANT.

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

22 54. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
23 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
24 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
25 for each workday in which a second off-duty meal period was not timely provided for each ten
26 (10) hours of work.

27 55. PLAINTIFFS further demand on behalf of themselves and each member of the
28 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off

1 duty paid rest period was not timely provided as required by law.

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

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

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

18 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
19 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
20 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
21 engaging in any unlawful and unfair business practices in the future.

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

1 **SECOND CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

4 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

6 61. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 62. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
10 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
11 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
12 to accurately calculate and pay reporting time and minimum wages to PLAINTIFFS and
13 CALIFORNIA CLASS Members.

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

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

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

22 66. DEFENDANT maintains a wage practice of paying PLAINTIFFS and the other
23 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
24 time they work. As set forth herein, DEFENDANT's policy and practice is to unlawfully and
25 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
26 CALIFORNIA LABOR SUB-CLASS.

27 67. DEFENDANT's unlawful wage and hour practices manifested, without
28 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of

1 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the
2 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

9 69. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
10 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not
11 receive the correct reporting time pay and minimum wage compensation for their time worked
12 for DEFENDANT.

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

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

27 72. DEFENDANT knew or should have known that PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time

1 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
2 to not pay employees for their labor as a matter of company policy, practice and procedure, and
3 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
4 of the CALIFORNIA LABOR SUB-CLASS the correct reporting time pay and minimum wages
5 for their time worked.

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

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

21
22 **THIRD CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

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

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

27 75. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
28 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior

1 paragraphs of this Complaint.

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

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

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

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

19 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
20 CALIFORNIA LABOR SUB-CLASS Members are required, permitted or suffered by
21 DEFENDANT to work for DEFENDANT and are not paid for all the time they work, including
22 overtime work.

23 81. DEFENDANT's unlawful wage and hour practices manifested, without
24 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
25 implementing a policy and practice that failed to accurately record overtime work by
26 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
27 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
28 CLASS for overtime work, including, the overtime work performed in excess of eight (8) hours

1 in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

15 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
16 from the overtime requirements of the law. None of these exemptions are applicable to the
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
18 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not
19 subject to a valid collective bargaining agreement that would preclude the causes of action
20 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of
21 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
22 of non-negotiable, non-waiveable rights provided by the State of California.

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

26 86. DEFENDANT fails to accurately pay the PLAINTIFFS and the other members
27 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
28 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,

1 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR
2 SUB-CLASS are required to work, and did in fact work, overtime as to which DEFENDANT
3 fails to accurately record and pay as evidenced by DEFENDANT's business records and
4 witnessed by employees.

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

11 88. DEFENDANT knew or should have known that PLAINTIFFS and the other
12 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for all overtime
13 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
14 to not pay employees for their labor as a matter of company policy, practice and procedure, and
15 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
16 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

25 90. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory
27 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
28 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's

1 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
2 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
3 statutory costs.

4
5 **FOURTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

28 93. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
2 CLASS Members who are not provided a meal period, in accordance with the applicable Wage
3 Order, one additional hour of compensation at each employee's regular rate of pay for each
4 workday that a meal period was not provided.

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

9
10 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

28 97. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
2 CLASS Members who are not provided a rest period, in accordance with the applicable Wage
3 Order, one additional hour of compensation at each employee's regular rate of pay for each
4 workday that rest period was not provided.

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

9
10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

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

20 (1) gross wages earned,

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

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

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

- 1 (5) net wages earned,
- 2 (6) the inclusive dates of the period for which the employee is paid,
- 3 (7) the name of the employee and his or her social security number, except that by
- 4 January 1, 2008, only the last four digits of his or her social security number or an
- 5 employee identification number other than a social security number may be shown on
- 6 the itemized statement,
- 7 (8) the name and address of the legal entity that is the employer, and
- 8 (9) all applicable hourly rates in effect during the pay period and the corresponding
- 9 number of hours worked at each hourly rate by the employee.

10 101. DEFENDANT also fails to provide PLAINTIFFS and the other members of the

11 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed

12 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226

13 provides that every employer shall furnish each of his or her employees with an accurate

14 itemized wage statement in writing showing, among other things, gross wages earned and all

15 applicable hourly rates in effect during the pay period and the corresponding amount of time

16 worked at each hourly rate. Aside, from the violations listed above, DEFENDANT failed to

17 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under

18 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided

19 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with wage

20 statements which violated Cal. Lab. Code § 226.

21 102. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code

22 § 226, causing injury and damages to PLAINTIFFS and the other members of the

23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs

24 expended calculating the correct wages for all missed meal and rest breaks and the amount of

25 employment taxes which were not properly paid to state and federal tax authorities. These

26 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the

27 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars

28 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars

1 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in
2 an amount according to proof at the time of trial (but in no event more than four thousand
3 dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA
4 LABOR SUB-CLASS herein).

5
6 **SEVENTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

1 members for expenses resulting from using their personal cellular phones for DEFENDANT
2 within the course and scope of their employment for DEFENDANT. These expenses are
3 necessary to complete their principal job duties. DEFENDANT is estopped by
4 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses
5 are necessary expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-
6 CLASS members, DEFENDANT fails to indemnify and reimburse PLAINTIFFS and the
7 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is
8 required to do under the laws and regulations of California.

9 106. PLAINTIFFS therefore demand reimbursement for expenditures or losses
10 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
11 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
12 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **EIGHTH CAUSE OF ACTION**

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

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

16 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

17 **and Against All Defendants)**

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

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

22 As used in this article:

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

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

1 payable immediately.”

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

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

13 111. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR
14 SUB-CLASS Members’ employment contract.

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

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

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

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

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1 **NINTH CAUSE OF ACTION**

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

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

4 **(By PLAINTIFFS and Against All Defendants)**

5 115. PLAINTIFFS reallege and incorporate by this reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

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

17 117. PLAINTIFFS, and such persons that may be added from time to time who
18 satisfy the requirements and exhaust the administrative procedures under the Private
19 Attorney General Act, bring this Representative Action on behalf of the State of California
20 with respect to themselves and all individuals who are or previously were employed by
21 Defendants WWF Operating Company, LLC; Danone North America Public Benefit
22 Corporation; and, Danone US, LLC in California who were classified as hourly, non-exempt
23 employees ("AGGRIEVED EMPLOYEES") during the time period of June 4, 2020 to
24 August 5, 2022 (the "PAGA PERIOD").

25 118. On June 3, 2021, Plaintiff Venegas gave written notice by electronic mail to
26 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
28 Labor Code § 2699.3. On September 29, 2021, Plaintiff Lainez gave written notice by

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

8 119. The policies, acts and practices heretofore described were and are an unlawful
9 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
10 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
11 properly record and provide legally required meal and rest periods, (c) failed to pay
12 minimum wages, (d) failed to pay overtime and sick pay wages, (e) failed to reimburse
13 employees for required expenses, (f) failed to timely pay wages upon termination, (g) failed
14 to timely pay wages during employment, (h) failed to keep complete and accurate payroll
15 records and (i) failed to provide seating, all in violation of the applicable Labor Code
16 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
17 246 *et seq.*, 351, 510, 512, 552 558(a)(1)(2), 1174(d), 1194, 1197, 1197.1, 1198, 2800,
18 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B) and 14,
19 and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
20 conduct.¹ PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor
21 Code Private Attorney General Act of 2004 as the representatives of the State of California
22 for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED
23 EMPLOYEES.

24 120. All of the conduct and violations alleged herein occurred during the PAGA
25 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
26

27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations
2 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
3 2018 AJDAR 12157 (Certified for Publication 12/19/18).

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the CALIFORNIA CLASS:

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

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

- 20 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
21 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
22 action pursuant to Cal. Code of Civ. Proc. § 382;
23 B) Compensatory damages, according to proof at trial, including compensatory
24 damages for minimum and overtime compensation due PLAINTIFFS and the
25 other members of the CALIFORNIA LABOR SUB-CLASS, during the
26 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
27 at the statutory rate;
28 C) Meal and rest period compensation pursuant to California Labor Code Section

226.7 and the applicable IWC Wage Order;

- D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,
- G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. On all claims:

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

Dated: November 29, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: /s/ Norman B. Blumenthal

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: November 29, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: /s/ Norman B. Blumenthal

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