

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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- WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

July 29, 2021
CA2467

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

D.R. Horton Bay, Inc.
Certified Mail #70203160000075433111
C T Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by D.R. Horton, Inc. and/or D.R. Horton Los Angeles Holding Company, Inc. and/or D.R. Horton Bay, Inc. and/or D.R. Horton LA North, Inc. and/or D.R. Horton, Inc. - Midwest in California and classified as non-exempt employees during the time period of July 29, 2020 until a date as determined by the Court. Our offices represent Plaintiff Chandrika Lortscher (“Plaintiff”) and other Aggrieved Employees in a lawsuit against D.R. Horton, Inc. and/or D.R. Horton Los Angeles Holding Company, Inc. and/or D.R. Horton Bay, Inc. and/or D.R. Horton LA North, Inc. and/or D.R. Horton, Inc. - Midwest (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee in the position of a Closing Coordinator from May of 2015 to May of 2021 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks at their correct regular rates of pay by including all non-discretionary incentive compensation, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and

Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Plaintiff and Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and other Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period. Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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Certified Mail #70203160000075433128
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“Aggrieved Employees” refers to all individuals who are or previously were employed by D.R. Horton, Inc. and/or D.R. Horton Los Angeles Holding Company, Inc. and/or D.R. Horton Bay, Inc. and/or D.R. Horton LA North, Inc. and/or D.R. Horton, Inc. - Midwest in California and classified as non-exempt employees during the time period of July 29, 2020 until a date as determined by the Court. Our offices represent Plaintiff Chandrika Lortscher (“Plaintiff”) and other Aggrieved Employees in a lawsuit against D.R. Horton, Inc. and/or D.R. Horton Los Angeles Holding Company, Inc. and/or D.R. Horton Bay, Inc. and/or D.R. Horton LA North, Inc. and/or D.R. Horton, Inc. - Midwest (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee in the position of a Closing Coordinator from May of 2015 to May of 2021 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks at their correct regular rates of pay by including all non-discretionary incentive compensation, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and

Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Plaintiff and Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and other Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period. Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 CHANDRIKA LORTSCHER, an individual, on
15 behalf of herself and on behalf of all persons
16 similarly situated,

17 Plaintiff,

18 vs.

19 D.R. HORTON, INC., a Corporation; D.R.
20 HORTON LOS ANGELES HOLDING
21 COMPANY, INC., a Corporation; D.R. HORTON
22 BAY, INC., a Corporation; D.R. HORTON LA
23 NORTH, INC., a Corporation; D.R. HORTON,
24 INC. - MIDWEST, a Corporation; and DOES 1
25 through 50, inclusive,

26 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant D.R. Horton, Inc. is a Corporation that at all relevant times mentioned
7 herein conducted and continues to conduct substantial business in the state of California.

8 2. Defendant D.R. Horton Los Angeles Holding Company, Inc. is a Corporation that
9 at all relevant times mentioned herein conducted and continues to conduct substantial business
10 in the state of California.

11 3. Defendant D.R. Horton Bay, Inc. is a Corporation that at all relevant times
12 mentioned herein conducted and continues to conduct substantial business in the state of
13 California.

14 4. Defendant D.R. Horton LA North, Inc. is a Corporation that at all relevant times
15 mentioned herein conducted and continues to conduct substantial business in the state of
16 California.

17 5. Defendant D.R. Horton, Inc. - Midwest is a Corporation that at all relevant times
18 mentioned herein conducted and continues to conduct substantial business in the state of
19 California.

20 6. PLAINTIFF alleges there has existed a unity of interest and ownership between
21 D.R. Horton, Inc., D.R. Horton Los Angeles Holding Company, Inc., D.R. Horton Bay, Inc.,
22 D.R. Horton LA North, Inc., D.R. Horton, Inc. - Midwest such that any individuality and
23 separateness between the entities has ceased and all Defendants are referred to herein as
24 “DEFENDANT.”

25 7. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
26 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
27 and ownership between DEFENDANT such that any individuality and separateness between
28 the entities has ceased. D.R. Horton, Inc., D.R. Horton Los Angeles Holding Company, Inc.,

1 D.R. Horton Bay, Inc., D.R. Horton LA North, Inc., D.R. Horton, Inc. - Midwest and DOES 1-
2 50 are therefore alter egos of each other. Adherence to the fiction of the separate existence of
3 DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice
4 by protecting DEFENDANT from liability for the wrongful acts committed by them.

5 8. PLAINTIFF further alleges that Defendants are the alter egos of each other for
6 the following reasons:

7 (A) On the California Secretary of State's website
8 (<https://businesssearch.sos.ca.gov/>) D.R. Horton, Inc., D.R. Horton Los
9 Angeles Holding Company, Inc., D.R. Horton Bay, Inc., D.R. Horton LA
10 North, Inc., D.R. Horton, Inc. - Midwest have the same entity address
11 and/or mailing address and/or Agent for Service of Process; and,

12 (B) On information and belief D.R. Horton, Inc., D.R. Horton Los Angeles
13 Holding Company, Inc., D.R. Horton Bay, Inc., D.R. Horton LA North,
14 Inc., D.R. Horton, Inc. - Midwest utilize the same standardized
15 employment forms and issue the same employment policies.

16 9. DEFENDANT operates a homebuilding company.

17 10. PLAINTIFF was employed by DEFENDANT in California from May of 2015
18 until May of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
19 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
20 of minimum and overtime wages due for all time worked.

21 11. PLAINTIFF brings this Class Action on behalf of herself and a California class,
22 defined as all individuals who are or previously were employed by D.R. Horton, Inc., and/or
23 D.R. Horton Los Angeles Holding Company, Inc., and/or D.R. Horton Bay, Inc., and/or D.R.
24 Horton LA North, Inc., and/or D.R. Horton, Inc. - Midwest in California and classified as non-
25 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
26 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
27 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
28 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

1 12. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which
4 failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged
5 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
6 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
7 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
8 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
9 the other members of the CALIFORNIA CLASS who have been economically injured by
10 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
11 equitable relief.

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

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

THE CONDUCT

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administered a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members were paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business records. As a result, DEFENDANT failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the proper minimum and overtime wages.

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

17. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members' compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT. The non-discretionary incentive program provided all employees paid on an hourly basis with incentive compensation when the employees met the

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

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

16 19. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
17 employment are due and payable twice during each calendar month, on days designated in
18 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(a) expressly
19 requires employers to pay employees all wages owed within eleven (11) days of the close of the
20 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
21 CALIFORNIA CLASS Members all wages owed to them within eleven (11) days of the close
22 of the payroll period.

23 20. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
24 to collect or receive from an employee any part of wages theretofore paid by said employer to
25 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
26 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
27 payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
28 all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA

1 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
2 each applicable pay period and upon termination. PLAINTIFF and members of the
3 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
4 according to proof, related penalties, interest, attorney fees and costs.

5 21. As a result of their rigorous work schedules, PLAINTIFF and other
6 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
7 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
8 other CALIFORNIA CLASS Members were required from time to time to perform work as
9 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
10 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
11 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
12 which these employees were required by DEFENDANT to work ten (10) hours of work.
13 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
14 without additional compensation and in accordance with DEFENDANT's corporate policy and
15 practice.

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

1 employers must relieve employees of all duties and relinquish control over how employees
2 spend their time which includes control over the locations where employees may take their rest
3 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
4 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
5 other CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
6 DEFENDANT's rule which stated PLAINTIFF and other CALIFORNIA CLASS Members
7 could not leave the work premises during their rest period. As a result of PLAINTIFF being
8 required to be present on the premises he was from time to time required by DEFENDANT to
9 work during what should of been his off duty rest period.

10 23. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
11 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
12 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
13 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
14 all time worked, meaning the time during which an employee was subject to the control of an
15 employer, including all the time the employee was permitted or suffered to permit this work.
16 DEFENDANT required these employees to work off the clock without paying them for all the
17 time they were under DEFENDANT's control. Specifically, PLAINTIFF worked through his
18 various meal and rest breaks as he was often interrupted by clients and their immediate needs. This
19 work also was done off-the-clock. As such, DEFENDANT knew or should have known that
20 PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for
21 all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
22 time worked by working without their time being accurately recorded and without compensation
23 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
24 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
25 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
26 1197, and 1197.1.

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

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

9 25. In the course of their employment PLAINTIFF and other CALIFORNIA
10 CLASS Members as a business expense, were required by DEFENDANT to use their own
11 personal cellular phones as a result of and in furtherance of their job duties as employees for
12 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
13 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
14 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
15 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
16 included, but were not limited to, costs related to the use of their personal cellular phones,
17 all on behalf of and for the benefit of DEFENDANT.

18 26. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
19 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
20 wage statements which failed to show, among other things, the correct gross and net wages
21 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
22 employees with an accurate itemized wage statement in writing showing, among other
23 things, gross wages earned and all applicable hourly rates in effect during the pay period and
24 the corresponding amount of time worked at each hourly rate. PLAINTIFF and
25 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
26 wage statements should reflect all applicable hourly rates during the pay period and the total
27 hours worked, and the applicable pay period in which the wages were earned pursuant to
28 California Labor Code Section 226(a)(2). The wage statements DEFENDANT provided to

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
2 such information. DEFENDANT also violated Cal. Lab. Code Section 226(a)(8) by failing to list
3 the correct legal entity that employed PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
4 Members. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
5 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code
6 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
7 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
8 § 226.

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

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

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

JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

32. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a

1 California class, defined as all individuals who are or previously were employed by D.R.
2 Horton, Inc., and/or D.R. Horton Los Angeles Holding Company, Inc., and/or D.R. Horton
3 Bay, Inc., and/or D.R. Horton LA North, Inc., and/or D.R. Horton, Inc. - Midwest in
4 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any
5 time during the period beginning four (4) years prior to the filing of this Complaint and
6 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD").
7 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is
8 under five million dollars (\$5,000,000.00).

9 33. To the extent equitable tolling operates to toll claims by the CALIFORNIA
10 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
11 accordingly.

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

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

27 36. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
28 CLASS Members is impracticable.

1 37. DEFENDANT violated the rights of the CALIFORNIA CLASS under
2 California law by:

- 3 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
4 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
5 and/or deceptively having in place company policies, practices and
6 procedures that failed to record and pay PLAINTIFF and the other
7 members of the CALIFORNIA CLASS for all time worked, including
8 minimum wages owed and overtime wages owed for work performed
9 by these employees;
- 10 (b) Committing an act of unfair competition in violation of the UCL, by
11 failing to provide the PLAINTIFF and the other members of the
12 CALIFORNIA CLASS with the legally required meal and rest periods;
13 and,
- 14 (c) Committing an act of unfair competition in violation of the California
15 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
16 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
17 and the CALIFORNIA CLASS members with necessary expenses
18 incurred in the discharge of their job duties.

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

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

1 (c) The claims of the representative PLAINTIFF are typical of the claims
2 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
3 the other members of the CALIFORNIA CLASS, was classified as a
4 non-exempt employee paid on an hourly basis who was subjected to the
5 DEFENDANT's deceptive practice and policy which failed to provide
6 the legally required meal and rest periods to the CALIFORNIA CLASS
7 and thereby underpaid compensation to PLAINTIFF and
8 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
9 result of DEFENDANT's employment practices. PLAINTIFF and the
10 members of the CALIFORNIA CLASS were and are similarly or
11 identically harmed by the same unlawful, deceptive, and unfair
12 misconduct engaged in by DEFENDANT; and,

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

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

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

27 1) Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA CLASS which would establish

1 incompatible standards of conduct for the parties opposing the
2 CALIFORNIA CLASS; and/or,

3 2) Adjudication with respect to individual members of the
4 CALIFORNIA CLASS which would as a practical matter be
5 dispositive of interests of the other members not party to the
6 adjudication or substantially impair or impede their ability to
7 protect their interests.

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

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

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

27 1) The interests of the members of the CALIFORNIA CLASS in
28 individually controlling the prosecution or defense of separate

1 actions in that the substantial expense of individual actions will
2 be avoided to recover the relatively small amount of economic
3 losses sustained by the individual CALIFORNIA CLASS
4 Members when compared to the substantial expense and burden
5 of individual prosecution of this litigation;

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

8 A. Inconsistent or varying adjudications with respect to
9 individual members of the CALIFORNIA CLASS, which
10 would establish incompatible standards of conduct for the
11 DEFENDANT; and/or,

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

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

24 4) A class action is superior to other available methods for the fair
25 and efficient adjudication of this litigation because class
26 treatment will obviate the need for unduly and unnecessary
27 duplicative litigation that is likely to result in the absence of
28

certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- 1 (g) DEFENDANT has acted or refused to act on grounds generally
2 applicable to the CALIFORNIA CLASS, thereby making final class-
3 wide relief appropriate with respect to the CALIFORNIA CLASS as a
4 whole;
- 5 (h) The members of the CALIFORNIA CLASS are readily ascertainable
6 from the business records of DEFENDANT; and,
- 7 (i) Class treatment provides manageable judicial treatment calculated to
8 bring a efficient and rapid conclusion to all litigation of all wage and
9 hour related claims arising out of the conduct of DEFENDANT as to
10 the members of the CALIFORNIA CLASS.

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

16
17 **THE CALIFORNIA LABOR SUB-CLASS**

18 42. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
19 and Eighth Causes of Action on behalf of a California sub-class, defined as all members of
20 the CALIFORNIA CLASS who are or previously were employed by D.R. Horton, Inc.,
21 and/or D.R. Horton Los Angeles Holding Company, Inc., and/or D.R. Horton Bay, Inc.,
22 and/or D.R. Horton LA North, Inc., and/or D.R. Horton, Inc. - Midwest in California and
23 classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
24 time during the period beginning three (3) years prior to the filing of this Complaint and
25 ending on the date as determined by the Court(the "CALIFORNIA LABOR SUB-CLASS
26 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
27 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
28 dollars (\$5,000,000.00).

1 43. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
2 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
3 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
4 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
6 these employees, even though DEFENDANT enjoyed the benefit of this work, required
7 employees to perform this work and permitted or suffered to permit this work.
8 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
9 which these employees are entitled in order to unfairly cheat the competition and unlawfully
10 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
11 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
12 should be adjusted accordingly.

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

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

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

- 22 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB-
24 CLASS for missed meal and rest breaks in violation of the California
25 Labor Code and California regulations and the applicable California
26 Wage Order;

- 1 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with accurate
3 itemized wage statements;
- 4 (c) Whether DEFENDANT has engaged in unfair competition by the
5 above-listed conduct;
- 6 (d) The proper measure of damages and penalties owed to the members of
7 the CALIFORNIA LABOR SUB-CLASS; and,
- 8 (e) Whether DEFENDANT's conduct was willful.

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

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

- 1 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
2 and the CALIFORNIA LABOR SUB-CLASS members with necessary
3 expenses incurred in the discharge of their job duties; and,
4 (g) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
5 when an employee is discharged or quits from employment, the
6 employer must pay the employee all wages due without abatement, by
7 failing to tender full payment and/or restitution of wages owed or in the
8 manner required by California law to the members of the
9 CALIFORNIA LABOR SUB-CLASS who have terminated their
10 employment.

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

- 13 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
14 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
15 CLASS Members is impracticable and the disposition of their claims as
16 a class will benefit the parties and the Court;
17 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
18 issues that are raised in this Complaint are common to the
19 CALIFORNIA LABOR SUB-CLASS and will apply to every member
20 of the CALIFORNIA LABOR SUB-CLASS;
21 (c) The claims of the representative PLAINTIFF are typical of the claims
22 of each member of the CALIFORNIA LABOR SUB-CLASS.
23 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
24 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
25 was subjected to the DEFENDANT's practice and policy which failed
26 to pay the correct amount of wages due to the CALIFORNIA LABOR
27 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
28 DEFENDANT's employment practices. PLAINTIFF and the members

1 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
2 identically harmed by the same unlawful, deceptive, and unfair
3 misconduct engaged in by DEFENDANT; and,

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

13 49. In addition to meeting the statutory prerequisites to a Class Action, this action
14 is 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
17 of separate actions by individual members of the CALIFORNIA
18 LABOR SUB-CLASS will create the risk of:
- 19 1) Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA LABOR SUB-CLASS which
21 would establish incompatible standards of conduct for the
22 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 23 2) Adjudication with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS which would as a
25 practical matter be dispositive of interests of the other members
26 not party to the adjudication or substantially impair or impede
27 their ability to protect their interests.
- 28

- 1 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
2 acted or refused to act on grounds generally applicable to the
3 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
4 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
5 whole in that DEFENDANT fails to pay all wages due. Including the
6 correct wages for all time worked by the members of the
7 CALIFORNIA LABOR SUB-CLASS as required by law;
- 8 (c) Common questions of law and fact predominate as to the members of
9 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
10 and violations of California Law as listed above, and predominate over
11 any question affecting only individual CALIFORNIA LABOR SUB-
12 CLASS Members, and a Class Action is superior to other available
13 methods for the fair and efficient adjudication of the controversy,
14 including consideration of:
- 15 1) The interests of the members of the CALIFORNIA LABOR
16 SUB-CLASS in individually controlling the prosecution or
17 defense of separate actions in that the substantial expense of
18 individual actions will be avoided to recover the relatively small
19 amount of economic losses sustained by the individual
20 CALIFORNIA LABOR SUB-CLASS Members when compared
21 to the substantial expense and burden of individual prosecution
22 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
3 practical matter be dispositive of the interests of the other
4 members not parties to the adjudication or substantially
5 impair or 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
15 treatment will obviate the need for unduly and unnecessary
16 duplicative litigation that is likely to result in the absence of
17 certification of this action pursuant to Cal. Code of Civ. Proc. §
18 382.

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

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

24 (b) A Class Action is superior to any other available method for the fair
25 and efficient adjudication of the claims of the members of the
26 CALIFORNIA LABOR SUB-CLASS because in the context of
27 employment litigation a substantial number of individual
28 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting

1 their rights individually out of fear of retaliation or adverse impact on
2 their employment;

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

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

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

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

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

21 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANT. The
23 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
24 CLASS Members who worked for DEFENDANT in California at any
25 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

26 (i) Class treatment provides manageable judicial treatment calculated to
27 bring a efficient and rapid conclusion to all litigation of all wage and
28

1 hour related claims arising out of the conduct of DEFENDANT as to
2 the members of the CALIFORNIA LABOR SUB-CLASS.

3
4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

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

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

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

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

13 53. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
14 defines
15 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
16 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
17 competition as follows:

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

26 Cal. Bus. & Prof. Code § 17203.

27 54. By the conduct alleged herein, DEFENDANT has engaged and continues to
28 engage in a business practice which violates California law, including but not limited to, the
applicable Industrial Wage Order(s), the California Code of Regulations and the California
Labor Code including Sections 204, 210, 221, 226.7, 246, 351, 510, 512, 1194, 1197,
1197.1, 1198 & 2802, the Fair Labor Standards Act and federal regulations promulgated

1 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
2 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
3 held to constitute unfair competition, including restitution of wages wrongfully withheld.

4 55. By the conduct alleged herein, DEFENDANT's practices were unlawful and
5 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
6 unscrupulous or substantially injurious to employees, and were without valid justification or
7 utility for which this Court should issue equitable and injunctive relief pursuant to Section
8 17203 of the California Business & Professions Code, including restitution of wages
9 wrongfully withheld.

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

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

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

27 59. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
2 pay for each workday in which a second off-duty meal period was not timely provided for
3 each ten (10) hours of work.

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

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

13 62. All the acts described herein as violations of, among other things, the
14 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
15 California Labor Code, were unlawful and in violation of public policy, were immoral,
16 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
17 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
18 *seq.*

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

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

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

SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

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

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

66. 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.

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

68. 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.

69. 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.

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

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

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

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

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

24 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
25 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
26 Members to work without paying them for all the time they were under DEFENDANT's
27 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
28

1 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
2 that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

24 79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS therefore request recovery of all unpaid wages, including overtime wages,
26 according to proof, interest, statutory costs, as well as the assessment of any statutory
27 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or
28 other applicable statutes. To the extent overtime compensation is determined to be owed to

1 the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
2 DEFENDANT’S conduct also violates Labor Code §§ 201 and/or 202, and therefore these
3 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
4 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
5 Members. DEFENDANT’s conduct as alleged herein was willful, intentional and not in
6 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
7 are entitled to seek and recover statutory costs.

8
9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

27 89. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
28

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

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

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

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

24 93. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
26 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
28

1 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

24
25 **FOURTH CAUSE OF ACTION**

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

27 **[Cal. Lab. Code §§ 226.7 & 512]**
28

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

96. 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.

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

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

99. 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.

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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)

100. 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.

101. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees from time to time 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 from time to time.

PLAINTIFF and other CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

102. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA

1 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
2 the applicable Wage Order, one additional hour of compensation at each employee's regular
3 rate of pay for each workday that rest period was not provided.

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

8 **SIXTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 2802]**

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

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

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

17 An employer shall indemnify his or her employee for all necessary
18 expenditures or losses incurred by the employee in direct consequence of the
19 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.

20 106. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802,
21 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
22 CLASS members for required expenses incurred in the discharge of their job duties for
23 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the
24 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
25 limited to, costs related to using their personal cellular phones, all on behalf of and for the
26 benefit of DEFENDANTS. DEFENDANTS' policy, practice and procedure was to not
27 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
28

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

9 107. PLAINTIFF therefore demands 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 **SEVENTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

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

- 23 (1) gross wages earned,
24 (2) total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare Commission,
28 (3) the number of piecerate 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,

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

9 110. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
10 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
11 wage statements which failed to show, among other things, the correct gross and net wages
12 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
13 employees with an accurate itemized wage statement in writing showing, among other
14 things, gross wages earned and all applicable hourly rates in effect during the pay period and
15 the corresponding amount of time worked at each hourly rate. PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
17 wage statements should reflect all applicable hourly rates during the pay period and the total
18 hours worked, and the applicable pay period in which the wages were earned pursuant to
19 California Labor Code Section 226(a). PLAINTIFF and CALIFORNIA CLASS Members
20 were paid on an hourly basis. As such, the wage statements should reflect all applicable
21 hourly rates during the pay period and the total hours worked, and the applicable pay period
22 in which the wages were earned pursuant to California Labor Code Section 226(a). The
23 wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS
24 Members failed to identify such information. PLAINTIFF and CALIFORNIA CLASS
25 Members were paid on an hourly basis. As such, the wage statements should reflect all
26 applicable hourly rates during the pay period and the total hours worked, and the applicable
27 pay period in which the wages were earned pursuant to California Labor Code Section
28 226(a)(2). The wage statements DEFENDANT provided to PLAINTIFF and other
CALIFORNIA CLASS Members failed to identify such information. Aside, from the
violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
itemized wage statement that lists all the requirements under California Labor Code 226 *et*

1 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated
3 Cal. Lab. Code § 226.

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

16
17 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

26 As used in this article:

- 27 (a) "Wages" includes all amounts for labor performed by employees of
every description, whether the amount is fixed or ascertained by the
standard of time, task, piece, Commission basis, or other method of calculation.
28 (b) "Labor" includes labor, work, or service whether rendered or

1 performed under contract, subcontract, partnership, station plan, or other
2 agreement if the labor to be paid for is performed personally by the person
demanding payment.

3 114. Cal. Lab. Code § 201 states, in relevant part, that “If an employer discharges
4 an employee, the wages earned and unpaid at the time of discharge are due and payable
5 immediately.”

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

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

13 116. There was no definite term in PLAINTIFF’s or any other CALIFORNIA
14 LABOR SUB-CLASS Members’ employment contract.

15 117. Cal. Lab. Code § 203 states:

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

19 118. When PLAINTIFF left employment with DEFENDANTS,
20 DEFENDANTS still owed PLAINTIFF wages for work performed because
21 PLAINTIFF was not compensated correctly for his overtime worked and meal and rest
22 breaks missed. To date, DEFENDANTS has not paid PLAINTIFF these wages still
23 owed to her. As such, DEFENDANTS has not fully paid PLAINTIFF all wages still
24 owed to her or any penalty wages that are now owed to her under California Labor Code
25 § 203.

26 119. The employment of PLAINTIFF and many other CALIFORNIA LABOR
27 SUB-CLASS Members has terminated, yet as to those individuals whose employment
28

1 terminated, DEFENDANTS did not timely tender payment of all wages owed as required by
2 law.

3 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
4 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,
5 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
6 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated
7 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and
8 statutory costs as allowed.

9 **PRAYER FOR RELIEF**

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

12 1. On behalf of the CALIFORNIA CLASS:

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

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

- 24 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
25 Causes Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
26 action pursuant to Cal. Code of Civ. Proc. § 382;
27 B) Compensatory damages, according to proof at trial, including compensatory
28 damages for minimum and overtime compensation due PLAINTIFF and the other

members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) 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;

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

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

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

G) The wages of all terminated employees from 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 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 §221, §226, §1194, and/or §2802.

Dated: July 29, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: July 29, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff