

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/15/2023 at 10:28:00 AM

Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SIERRA STEELE and ELIJAH WILKINSON,
on behalf of the State of California, as private
attorneys general, and as individuals, on behalf
of themselves and on behalf of all persons
similarly situated,

PLAINTIFFS,

vs.

LEGOLAND CALIFORNIA, LLC, a Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendants.

Lead Case No. 37-2021-00052868-CU-OE-CTL

[*Related Case:* No. 37-2021-00053132-CU-OE-CTL]

**FIRST AMENDED CONSOLIDATED
CLASS ACTION AND REPRESENTATIVE
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, & 1198;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194, & 1198;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201-203
9. FAILURE TO PAY WAGES WITHIN 7 DAYS OF THE CLOSE OF PAYROLL IN VIOLATION OF CAL. LAB. CODE § 204;
10. FAILURE TO PAY ALL SICK PAY IN VIOLATION OF CAL. LAB. CODE §§ 201-203 AND 246;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. UNLAWFUL DEDUCTIONS FROM
WAGES VIOLATION OF CAL. LAB. CODE §
221;
12. FAILURE TO PAY REPORTING TIME
PAY IN VIOLATION OF CALIFORNIA CODE
OF REGULATIONS, TITLE 8, SECTION
11040, SUBDIVISION 5(A)-(B); AND
13. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698, *et seq.*].

1 Plaintiffs Sierra Steele and Elijah Wilkinson (“PLAINTIFFS”), individuals, on behalf of
2 themselves and all other similarly situated current and former employees alleges on information and
3 belief, except for their own acts and knowledge which are based on personal knowledge, the following:

4 **THE PARTIES**

5 1. Defendant Legoland California, LLC (“DEFENDANT”) is a limited liability company
6 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
7 the state of California.

8 2. DEFENDANT owns and operates leisure facilities. The Company offers visitor
9 attractions including a theme park featuring hotels, water parks, rides, restaurants, and an aquarium.

10 3. Plaintiff Steele has been employed by DEFENDANT in California since March of 2019
11 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
12 basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime
13 wages due for all time worked.

14 4. Plaintiff Wilkinson has been employed by DEFENDANT in California since
15 November of 2018 and has been at all times classified by DEFENDANT as a non-exempt employee,
16 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
17 minimum and overtime wages due for all time worked.

18 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
19 defined as all individuals who are or previously were employed by DEFENDANT in California and
20 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
21 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by
22 the Court (the “CALIFORNIA CLASS PERIOD”).

23 6. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
24 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
25 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to
26 lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was an
27 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to
28 retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS

1 and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
2 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current
4 unlawful conduct, and all other appropriate legal and equitable relief.

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

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

20 **THE CONDUCT**

21 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning
23 the time during which an employee is subject to the control of an employer, including all the time the
24 employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and CALIFORNIA
25 CLASS Members to work without paying them for all the time they are under DEFENDANT's control.
26 Among other things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is
27 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS is from time to time interrupted by
28 work assignments while clocked out for what should be PLAINTIFFS' off-duty meal break.

1 PLAINTIFFS and CALIFORNIA CLASS Members also worked off the clock with respect to time
2 spent undergoing mandatory drug testing or any other testing and/or examination required as a
3 condition of employment. DEFENDANT, as a matter of established company policy and procedure,
4 administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and
5 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course
6 of their employment, PLAINTIFFS and CALIFORNIA CLASS Members are paid less than they
7 would have been paid had they been paid for actual recorded time rather than “rounded” time.
8 Additionally, during the CALIFORNIA CLASS PERIOD, DEFENDANT engages in the practice of
9 requiring PLAINTIFFS and CALIFORNIA CLASS Members to perform work off the clock in that
10 DEFENDANT, as a condition of employment, requires these employees to wait for and submit to loss
11 prevention inspections after clocking out of DEFENDANT’s timekeeping system, waiting in line in
12 order to pass through DEFENDANT’s security checkpoints before clocking into DEFENDANT’s
13 timekeeping system at the beginning of each scheduled shift, and waiting in line to clock in at
14 DEFENDANT’s timekeeping system for which DEFENDANT does not provide compensation.
15 Additionally, DEFENDANT requires PLAINTIFFS and other CALIFORNIA CLASS Members to
16 wait in line and submit to mandatory temperature checks for COVID-19 screening prior to passing
17 through DEFENDANT’s security checkpoint and prior to clocking into DEFENDANT’s timekeeping
18 system for the workday. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit
19 minimum wage, overtime wage compensation, and off-duty meal breaks by working without their
20 time being correctly recorded and without compensation at the applicable rates. DEFENDANT’s
21 policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time
22 worked, is evidenced by DEFENDANT’s business records.

23 10. State and federal law provides that employees must be paid overtime and meal and rest
24 break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFFS and other
25 CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied to
26 specific elements of an employee’s performance.

27 11. The second component of PLAINTIFFS’ and other CALIFORNIA CLASS Members’
28 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFFS and

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

13 12. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA
14 CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and are
15 not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA CLASS
16 Members are required from time to time to perform work as ordered by DEFENDANT for more than
17 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time
18 to time fails to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty
19 meal period for some workdays in which these employees are required by DEFENDANT to work ten
20 (10) hours of work. DEFENDANT also engaged in the practice of rounding the meal period times to
21 avoid paying penalties to PLAINTIFFS and other CALIFORNIA CLASS Members. PLAINTIFFS
22 and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
23 compensation and in accordance with DEFENDANT's corporate policy and practice.

24 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA
25 CLASS Members are also required from time to time to work in excess of four (4) hours without being
26 provided ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
27 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a
28 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and

1 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes
2 for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other
3 CALIFORNIA CLASS Members are also not provided with one hour wages in lieu thereof.
4 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to PLAINTIFFS
5 and the other CALIFORNIA CLASS Members. As a result, DEFENDANT's failure to provide
6 PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest periods
7 is evidenced by DEFENDANT's business records. Additionally, the applicable California Wage Order
8 requires employers to provide employees with off-duty rest periods, which the California Supreme
9 Court defined as time during which an employee is relieved from all work related duties and free from
10 employer control. In so doing, the Court held that the requirement under California law that employers
11 authorize and permit all employees to take rest period means that employers must relieve employees
12 of all duties and relinquish control over how employees spend their time which includes control over
13 the locations where employees may take their rest period. Employers cannot impose controls that
14 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
15 DEFENDANT's policy restricts PLAINTIFFS and other CALIFORNIA CLASS Members from
16 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFFS and
17 other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

18 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately record
19 and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of time these
20 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
21 required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked,
22 meaning the time during which an employee was subject to the control of an employer, including all
23 the time the employee was permitted or suffered to permit this work. DEFENDANT requires these
24 employees to work off the clock without paying them for all the time they are under DEFENDANT's
25 control. As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
26 members of the CALIFORNIA CLASS are under compensated for all time worked. As a result,
27 PLAINTIFFS and other CALIFORNIA CLASS Members forfeit time worked by working without
28 their time being accurately recorded and without compensation at the applicable minimum wage and

1 overtime wage rates. To the extent that the time worked off the clock does not qualify for overtime
2 premium payment, DEFENDANT fails to pay minimum wages for the time worked off-the-clock in
3 violation of Cal. Lab. Code §§ 1194, 1197, 1197.1, and 1198.

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

21 16. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
22 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
23 not more than seven calendar days following the close of the payroll period. Cal. Lab. Code § 210
24 provides:

25 [I]n addition to, and entirely independent and apart from, any other penalty provided in this
26 article, every person who fails to pay the wages of each employee as provided in Sections. . .
27 .204. . .shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
28 dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any
willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
employee, plus 25 percent of the amount unlawfully withheld.

1 17. DEFENDANT from time to time fails to pay PLAINTIFFS and members of the
2 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
3 period in accordance with Cal. Lab. Code § 204(d).

4 18. DEFENDANT underpays sick pay wages to PLAINTIFFS and other CALIFORNIA
5 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
6 Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-discretionary
7 remuneration, including but not limited to, incentives, shift differential pay, and bonuses. Rather than
8 pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to PLAINTIFFS and other
9 CALIFORNIA CLASS Members at their base rates of pay.

10 19. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for non-exempt employees
11 be calculated by dividing the employee's total wages, not including overtime premium pay, by the
12 employee's total hours worked in the full pay periods of the prior 90 days of employment.

13 20. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
14 regular rate of pay. PLAINTIFFS and other CALIFORNIA CLASS Members routinely earned non-
15 discretionary incentive wages, including but not limited to, incentives, shift differential pay, and
16 bonuses which increased their regular rate of pay. However, when sick pay was paid, it was paid at
17 the base rate of pay for PLAINTIFFS and other CALIFORNIA CLASS Members, as opposed to the
18 correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

19 21. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and
20 other CALIFORNIA CLASS Members their correct wages and accordingly owe waiting time
21 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and believe and
22 based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
23 PLAINTIFFS and other CALIFORNIA CLASS Members whose employment has separated are
24 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

25 22. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
26 collect or receive from an employee any part of wages theretofore paid by said employer to said
27 employee." DEFENDANT fails to pay all compensation due to PLAINTIFFS and other
28 CALIFORNIA LABOR SUB-CLASS Members, makes unlawful deductions from compensation

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

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

17 24. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
18 Members as a business expense, are required by DEFENDANT to use their own personal cellular
19 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not
20 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal
21 cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFFS and other CALIFORNIA
22 CLASS Members are required by DEFENDANT to use their personal cellular phones for work related
23 issues. As a result, in the course of their employment with DEFENDANT, PLAINTIFFS and other
24 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
25 were not limited to, costs related to the use of their personal cellular phones all on behalf of and for
26 the benefit of DEFENDANT.

27 25. Specifically as to PLAINTIFFS, DEFENDANT fails to provide all the legally required
28 off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage Order and Labor

1 Code and failed to pay PLAINTIFFS all minimum and overtime wages due to PLAINTIFFS.
2 DEFENDANT does not have a policy or practice which provided timely off-duty meal and rest breaks
3 to PLAINTIFFS and also fails to compensate PLAINTIFFS for PLAINTIFFS' missed meal and rest
4 breaks. The nature of the work performed by the PLAINTIFFS do not prevent PLAINTIFFS from
5 being relieved of all of his duties for the legally required off-duty meal periods. As a result,
6 DEFENDANT's failure to provide PLAINTIFFS with the legally required meal periods is evidenced
7 by DEFENDANT's business records. The amount in controversy for PLAINTIFFS individually do
8 not exceed the sum or value of \$75,000.

9 JURISDICTION AND VENUE

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

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

19 THE CALIFORNIA CLASS

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

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

1 30. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
2 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and
3 the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a
4 practice whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFFS and
5 other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work,
6 required employees to perform this work and permits or suffers to permit this work.

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

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

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

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

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

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

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

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

19 (d) The representative PLAINTIFFS will fairly and adequately represent and protect the
20 interest of the CALIFORNIA CLASS, and has retained counsel who are competent and
21 experienced in Class Action litigation. There are no material conflicts between the
22 claims of the representative PLAINTIFFS and the members of the CALIFORNIA
23 CLASS that would make class certification inappropriate. Counsel for the
24 CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS
25 Members.

26 35. In addition to meeting the statutory prerequisites to a Class Action, this action is
27 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:
28

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

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

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

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

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

23 (c) Common questions of law and fact exist as to the members of the CALIFORNIA
24 CLASS, with respect to the practices and violations of California law as listed above,
25 and predominate over any question affecting only individual CALIFORNIA CLASS
26 Members, and a Class Action is superior to other available methods for the fair and
27 efficient adjudication of the controversy, including consideration of:
28

1 1) The interests of the members of the CALIFORNIA CLASS in individually
2 controlling the prosecution or defense of separate actions in that the substantial
3 expense of individual actions will be avoided to recover the relatively small
4 amount of economic losses sustained by the individual CALIFORNIA CLASS
5 Members when compared to the substantial expense and burden of individual
6 prosecution of this litigation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (i) Class treatment provides manageable judicial treatment calculated to bring a efficient
26 and rapid conclusion to all litigation of all wage and hour related claims arising out of
27 the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.
28

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

6 **THE CALIFORNIA LABOR SUB-CLASS**

7 38. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
8 Ninth, Tenth, Eleventh and Twelfth Causes of Action on behalf of a California sub-class, defined as
9 all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT
10 in California and classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS")
11 at any time during the period three (3) years prior to the filing of the complaint and ending on the date
12 as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal.
13 Code of Civ. Proc. § 382.

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

25 40. DEFENDANT maintains records from which the Court can ascertain and identify by
26 name and job title, each of DEFENDANT's employees who have been intentionally subjected to
27 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS will seek
28

1 leave to amend the complaint to include any additional job titles of similarly situated employees when
2 they have been identified.

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

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

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

17 43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
18 California law by:

- 19 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS and the
20 members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime
21 worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and
22 1198;
- 23 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay
24 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the
25 correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab.
26 Code §§ 1194 and 1197;
- 27
28

- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment;
- (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties;
- (g) Violating Cal. Lab. Code § 204 by failing to pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS wages within 7 days of the close of payroll;
- (h) Violating Cal. Lab. Code §§ 201-203 and 246 by failing to pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS sick pay due;
- (i) Violating Cal. Lab. Code § 221 by taking unlawful deductions from wages earned by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS; and
- (j) Violating California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B) by failing to pay reporting time pay to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS.

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

- 1 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous
2 that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable
3 and the disposition of their claims as a class will benefit the parties and the Court;
- 4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised
5 in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will
6 apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- 7 (c) The claims of the representative PLAINTIFFS are typical of the claims of each member
8 of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members
9 of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an
10 hourly basis who was subjected to the DEFENDANT's practice and policy which failed
11 to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
12 PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment
13 practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
14 were and are similarly or identically harmed by the same unlawful, deceptive, and
15 unfair misconduct engaged in by DEFENDANT; and,
- 16 (d) The representative PLAINTIFFS will fairly and adequately represent and protect the
17 interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are
18 competent and experienced in Class Action litigation. There are no material conflicts
19 between the claims of the representative PLAINTIFFS and the members of the
20 CALIFORNIA LABOR SUB-CLASS that would make class certification
21 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
22 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

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

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

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

1 A. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA LABOR SUB-CLASS, which would
3 establish incompatible standards of conduct for the DEFENDANT;
4 and/or,

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

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

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

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

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

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

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

26 **FIRST CAUSE OF ACTION**

27 **For Unlawful Business Practices**

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

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

2 47. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

4 48. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §
5 17021.

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

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

15 Cal. Bus. & Prof. Code § 17203.

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

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

 52. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
fraudulent in that DEFENDANT’s policy and practice failed to provide the legally mandated meal and

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

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

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

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

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

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

employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

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

61. PLAINTIFFS 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, PLAINTIFFS 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 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)**

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

4 63. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUBCLASS bring
5 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
6 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and
7 pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

15 67. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
16 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time
17 they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
18 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
19 CALIFORNIA LABOR SUB-CLASS.

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

24 69. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
26 by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT
27 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
28

1 the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
2 and regulations.

3 70. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
4 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the
5 correct minimum wage compensation for their time worked for DEFENDANT.

6 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
7 permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members to work
8 without paying them for all the time they were under DEFENDANT's control. During the
9 CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other members of the
10 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to,
11 constituting a failure to pay all earned wages.

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

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

23 74. In performing the acts and practices herein alleged in violation of California labor laws,
24 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
25 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act
26 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
27 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or
28 the consequences to them, and with the despicable intent of depriving them of their property and legal

1 rights, and otherwise causing them injury in order to increase company profits at the expense of these
2 employees.

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

14 **THIRD CAUSE OF ACTION**

15 **For Failure To Pay Overtime Compensation**

16 **[Cal. Lab. Code §§ 510, 1194 and 1198]**

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

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

22 77. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUBCLASS bring
23 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
24 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for
25 all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
26 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

25 84. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full
27 compensation for overtime worked.
28

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

92. PLAINTIFFS, 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.

93. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFFS 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 PLAINTIFFS 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, PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

94. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS 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.

95. As a proximate result of the aforementioned violations, PLAINTIFFS 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.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

4 101. Cal. Labor Code § 226 provides that an employer must furnish employees with an
5 “accurate itemized” statement in writing showing:

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

23 102. From time to time, DEFENDANT also fails to provide PLAINTIFFS and the other
24 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
25 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
26 226 provides that every employer shall furnish each of his or her employees with an accurate itemized
27 wage statement in writing showing, among other things, gross wages earned and all applicable hourly
28 rates in effect during the pay period and the corresponding amount of time worked at each hourly rate.
PLAINTIFFS and CALIFORNIA LABOR SUBCLASS Members were from time to time 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)(2). The wage statements DEFENDANT provided
to PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members failed to identify such
information. More specifically, the wage statements failed to identify the accurate total hours worked
each pay period. When the hours shown on the wage statements were added up, they did not equal the

1 actual total hours worked during the pay period. Aside, from the violations listed above in this
2 paragraph, DEFENDANT fails to issue to PLAINTIFFS an itemized wage statement that lists all the
3 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time
4 provides PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with wage
5 statements which violated Cal. Lab. Code § 226.

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

17 **SEVENTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code § 2802]**

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

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

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

26 An employer shall indemnify his or her employee for all necessary expenditures or
27 losses incurred by the employee in direct consequence of the discharge of his or her duties, or
28 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.

106. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

EIGHTH CAUSE OF ACTION

For Failure to Pay All Wages Due

[Cal. Lab. Code §§ 201-203, *et seq.*]

(By PLAINTIFFS and Against All Defendants)

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

109. Cal. Lab. Code § 200 provides, in relevant part, that:
As used in this article:

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

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

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

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

8 If an employee not having a written contract for a definite period quits his or her employment,
9 his or her wages shall become due and payable not later than 72 hours thereafter, unless the
10 employee has given 72 hours previous notice of his or her intention to quit, in which case the
11 employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
12 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
14 112. There was no definite term in PLAINTIFFS or any CALIFORNIA LABOR SUB-
15 CLASS Members' employment contract.

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

17 If an employer willfully fails to pay, without abatement or reduction, in accordance with
18 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
19 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.

20
21 114. There was no definite term in PLAINTIFFS or any CALIFORNIA LABOR SUB-
22 CLASS Members' employment contract.

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

1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Wages within 7 days of the Close of Payroll**

3 **[Cal. Lab. Code § 204]**

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

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

7 117. Labor Code § 204 instructs that: "All wages,...earned by any person in any
8 employment are due and payable twice during each calendar month, on days designated in advance by
9 the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of
10 any calendar month shall be paid for between the 16th and the 26th day of the month during which the
11 labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar
12 month, shall be paid for between the 1st and 10th day of the following month." Additionally, the
13 requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly,
14 or semimonthly payroll if the wages are paid not more than seven calendar days following the close
15 of the payroll period." As detailed above, DEFENDANT maintained a consistently applied policy and
16 practice of not paying all wages earned between the 1st and 15th days of a month between the 16th
17 and 26th day and failed to pay all wages earned between the 16th and the last day of the month between
18 the 1st and 10th day of the following month. This included failing to pay all wages due and owing to
19 PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members for all hours they worked
20 and failing to pay all wages earned by not more than seven calendar days following the close of the
21 payroll period. In addition to not paying for all hours worked off the clock and for all meal and rest
22 period premiums owed during a pay period, DEFENDANT also failed to issue wage statements twice
23 monthly with pay checks, which further directly violates Labor Code § 204 for failure to pay all wages
24 owed and failure to provide corresponding wage statements.

25 118. All wages due and owing to PLAINTIFFS and the other CALIFORNIA LABOR SUB-
26 CLASS members, including as required under Labor Code § 510, were therefore not timely paid by
27 DEFENDANT. Additionally, wages required by Labor Code § 1194 and other sections became due
28

1 and payable to each employee in each pay period that he or she was not provided with a meal period
2 or rest period or paid straight or overtime wages to which he or she was entitled.

3 119. DEFENDANT violated Labor Code § 204 by systematically refusing to timely pay
4 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
5 applicable IWC Wage Orders, employers are required "to pay each employee, on the established
6 payday for the period involved, not less than the applicable minimum wage for all
7 hours worked in the payroll period,..." Under Labor Code § 1198, "[t]he employment of any employee
8 for longer hours than those fixed by the order or under conditions of labor prohibited by the order is
9 unlawful." PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members may therefore
10 pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable
11 TWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

12 120. As a result of the unlawful acts of DEFENANT, PLAINTIFFS and the other
13 CALIFORNIA LABOR SUB-CLASS members have been deprived of wages in amounts to be
14 determined at trial, and they are entitled to recovery of such amounts, plus interest and penalties
15 thereon, attorneys' fees, and costs, pursuant to Labor Code § 210, 218.5, 1194 and 1198, and
16 paragraphs 4(B) and 20 of the applicable IWC Wage Orders.

17 **TENTH CAUSE OF ACTION**

18 **For Failure to Pay All Sick Pay**

19 **[Cal. Lab. Code §§ 201-203 and 246.]**

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

21 121. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
22 herein, the prior paragraphs of this Complaint.

23 122. Pursuant to Labor Code § 246, employers in California are required to provide
24 employees with sick leave time that accrues at the rate mandated in Labor Code § 246. Additionally,
25 Labor Code § 246(i) requires employers to notify employees of the amount of their accrued sick leave
26 either in their wage statements or in a separate writing provided on the designated pay date with the
27 employee's payment of wages.

1 123. Pursuant to Labor Code § 233, employers are required to permit employees to use
2 accumulated sick time for any of the reasons specified in Labor Code § 246.5 including the following:
3 diagnosis, care or treatment of an existing health condition of (or preventive care for) an employee or
4 an employee's family member. Labor Code § 246.5 specifically prohibits an employer from denying
5 employees the right to use accrued sick days or attempting to exercise their right to use accrued sick
6 days.

7 124. Once accrued sick leave is used by an employee, Labor Code 246(h) requires
8 employers to pay out used sick leave no later than the payday for the next regular payroll period after
9 the sick leave was taken.

10 125. Because of the amount of time PLAINTIFFS and the other CALIFORNIA LABOR
11 SUB-CLASS members were employed with DEFENDANT, California law required DEFENDANT
12 to provide them with sick leave time. Nevertheless, at all times during the statute of limitations period
13 applicable to this cause of action, in violation of Labor Code § 233, Labor Code § 246, and Labor
14 Code § 246.5, DEFENDANT failed to provide PLAINTIFFS and the other CALIFORNIA LABOR
15 SUB-CLASS members with the sick leave time mandated by law.

16 126. As a direct and proximate result of DEFENDANT's failure to provide PLAINTIFFS
17 and the other CALIFORNIA LABOR SUB-CLASS members with the sick time required by law and
18 failed to permit them the right to use their accumulated sick time as they requested for reasons
19 permitted by Section § 246.5, PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS
20 members are entitled to recover the actual damages suffered by them or one day's pay, whichever is
21 greater, as permitted by Labor Code § 233.

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

25 **ELEVENTH CAUSE OF ACTION**

26 **Unlawful Deduction of Wages**

27 **[Cal. Lab. Code § 221.]**

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

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

3 129. Pursuant to Labor Code § 221, "[i]t shall be unlawful for any employer to collect or
4 20 receive from an employee any part of wages theretofore paid by said employer to said employee."

5 130. Pursuant to Labor Code§ 200(a), "'Wages' includes all amounts for labor performed by
6 employees of every description, whether the amount is fixed or ascertained by the standard of time,
7 task, piece, commission basis, or other method of calculation."

8 131. DEFENDANT collected or received from PLAINTIFFS and the other CALIFORNIA
9 LABOR SUB-CLASS members a portion of their wages previously paid to PLAINTIFFS and the
10 other CALIFORNIA LABOR SUB-CLASS.

11 132. DEFENDANT's unlawful collection of wages in violation of Labor Code § 221 entitles
12 PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members to recover the amount of
13 withheld wages and to an "award [of] interest on all due and unpaid wages at the rate of interest
14 specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that
15 the wages were due and payable ... ," as provided in Labor Code § 218.6.

16 133. DEFENDANT'S unlawful collection of wages in violation of Labor Code § 221 has
17 necessitated that PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members bring
18 this action, thereby entitling PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS
19 members to an award of reasonable attorneys' fees and costs as provided by Labor Code § 218.5.

20 134. Pursuant to Labor Code§ 225.5, "every person who unlawfully withholds wages due
21 any employee in violation of Section ... 221 ... shall be subject to a civil penalty" as set forth in Section
22 225.5. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members are entitled to
23 recover these penalties from DEFENDANT's due to their unlawful collection or withholding of
24 PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members earned wages.

25 **TWELFTH CAUSE OF ACTION**

26 **For Failure to Pay Reporting Time Pay**

27 **[California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B).]**

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

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

3 136. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUBCLASS bring
4 a claim for DEFENDANT's willful and intentional violations of the Industrial Welfare Commission
5 requirements for DEFENDANT's failure to pay reporting time pay;

6 137. California Code of Regulations, Title 8, Section 11040, Subdivision 5, provides in
7 relevant part that:

8 (A) Each workday an employee is required to report for work and does report, but is not put to
9 work or is furnished less than half said employee's usual or scheduled day's work, the
10 employee shall be paid for half the usual or scheduled day's work, but in no event for less
11 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which
12 shall not be less than the minimum wage.

13 (B) If an employee is required to report for work a second time in any one workday and is
14 furnished less than two (2) hours of work on the second reporting, said employee shall be
15 paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the
16 minimum wage.

17 138. At all relevant times herein, DEFENDANT required PLAINTIFFS and the other
18 CALIFORNIA LABOR SUB-CLASS members, from time to time, required to report for work, but
19 ultimately did not put them to work but failed to pay them for half the usual or scheduled day's work
20 or two (2) hours at the employee's regular rate of pay.

21 139. At all relevant times herein, DEFENDANT required, from time to time , PLAINTIFFS
22 and the CALIFORNIA LABOR SUB-CLASS members to report for work a second time in any one
23 workday but failed to furnish less than two (2) hours of work on the second reporting and failed to pay
24 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for two (2) hours at the
25 employee's regular rate of pay.

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

THIRTEENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFFS and Against All Defendants)

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

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

143. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of July 23, 2020 until a date as determined by the Court (the "PAGA PERIOD").

144. On July 23, 2021, Plaintiff STEELE gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. On February 9, 2023, PLAINTIFFS sent an amended written notice via electronic mail to the Agency to add the claims of Plaintiff WILKINSON. The statutory waiting period for PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

145. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other AGGRIEVED

1 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
2 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
3 sick pay wages, (e) failed to reimburse employees for required expenses, (f) failed to pay all wages
4 due upon termination of employment, (g) failed to pay employees within 7 days of the close of the
5 payroll period, (h) failed to pay all sick pay due, (i) made unlawful deductions from compensation, (j)
6 failed to provide PLAINTIFFS and the other AGGRIEVED EMPLOYEES with suitable seats, and
7 (k) failed to pay reporting time pay, all in violation of the applicable Labor Code sections listed in
8 Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558,
9 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision
10 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
11 conduct. PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the Labor Code
12 Private Attorney General Act of 2004 as the representative of the State of California for the illegal
13 conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

14 146. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
15 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFFS during
16 the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that affected other
17 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
20 severally, as follows:

21 1. On behalf of the CALIFORNIA CLASS:

- 22 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a
23 class action pursuant to Cal. Code of Civ. Proc. § 382;
24 B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT
25 from engaging in similar unlawful conduct as set forth herein;
26 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from
27 compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and,
28

1 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution
2 of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other
3 members of the CALIFORNIA CLASS.

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

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

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

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

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

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

20 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR
21 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.

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

23 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of
24 2004.

25 4. On all claims:

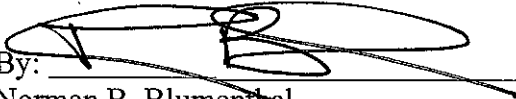
26 A) An award of interest, including prejudgment interest at the legal rate;

27 B) Such other and further relief as the Court deems just and equitable; and,
28

1 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including,
2 but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.
3

4 Dated: February 8, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

5
6 By: 

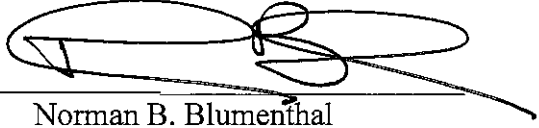
7 Norman B. Blumenthal
8 Attorneys for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

Dated: February 8, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: 

Norman B. Blumenthal
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Christine T. LeVu, am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On February 9, 2023, I served the document(s) described as:

1. FIRST AMENDED CONSOLIDATED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

Julie Dunne
Matthew Riley
Vani Parti
DLA PIPER LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297
Tel : 619-699-2700
Fax : 619-699-2701

Julie.dunne@us.dlapiper.com
Matthew.riley@us.dlapiper.com
vani.parti@us.dlapiper.com

Attorneys for Defendant
LEGOLAND California, LLC

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

Executed on February 15, 2023 at San Diego, California.


Christine T. LeVu