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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

01/26/2023

Clerk of the Court

BY: VANESSA WU

Deputy Clerk

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

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

9
10 ALMA HEYMAN, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

11 Plaintiff,

12 vs.

13 RENOIR HM, LLC, a Limited Liability Company;
14 and Does 1 through 50, Inclusive,

15 Defendants.

Case No. **CGC-21-595913**

**FIRST AMENDED CLASS 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;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PAY SICK WAGES IN VIOLATION OF CAL. LAB CODE §§201-204, 233, 246; and
9. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, et seq. FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 et seq., 210, 221, 226(a), 226.7, 227.3, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B)

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

4 **THE PARTIES**

5 1. Defendant Renoir HM, LLC (“DEFENDANT”) is a Limited Liability Company that at
6 all relevant times mentioned herein conducted and continues to conduct substantial and regular business
7 throughout California.

8 2. DEFENDANT belongs to the Hotel & Hospitality industry and specializes in the
9 management and operations of boutique hotels.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee
11 entitled to overtime pay and meal and rest periods from April of 2021 to June of 2021. PLAINTIFF was
12 at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in
13 whole or in part on an hourly basis and received additional compensation from DEFENDANT in the
14 form of non-discretionary incentive wages.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined
16 as all individuals who are or previously were employed by DEFENDANT IN California and classified
17 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period of December 1,
18 2018 though December 31, 2022 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
19 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
20 (\$5,000,000.00).

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

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

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

19 **THE CONDUCT**

20 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
21 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
22 the time during which an employee is subject to the control of an employer, including all the time the
23 employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA
24 CLASS Members to work without paying them for all the time they are under DEFENDANT's control.
25 PLAINTIFF and CALIFORNIA CLASS Members also worked off the clock with respect to time spent
26 undergoing mandatory drug testing or any other testing and/or examination required as a condition of
27 employment. Additionally, DEFENDANT, as a matter of established company policy and procedure,
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1 administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
2 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of
3 their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would have
4 been paid had they been paid for actual recorded time rather than “rounded” time. Additionally,
5 DEFENDANT engages in the practice of requiring PLAINTIFF and CALIFORNIA CLASS Members
6 to perform work off the clocking that DEFENDANT, as a condition of employment, required these
7 employees to wait in line and submit to mandatory temperature checks for COVID-19 screening and also
8 complete a COVID-19 questionnaire regarding whether these employees had any symptoms prior to
9 clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFF and other
10 CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty
11 meal breaks by working without their time being correctly recorded and without compensation at the
12 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA
13 CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

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

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

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

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

7 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately record
8 and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these
9 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
10 required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning
11 the time during which an employee was subject to the control of an employer, including all the time the
12 employee was permitted or suffered to permit this work. DEFENDANT requires these employees to
13 work off the clock without paying them for all the time they are under DEFENDANT's control. As
14 such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the
15 CALIFORNIA CLASS are under compensated for all time worked. As a result, PLAINTIFF and other
16 CALIFORNIA CLASS Members forfeit time worked by working without their time being accurately
17 recorded and without compensation at the applicable minimum wage and overtime wage rates. To the
18 extent that the time worked off the clock does not qualify for overtime premium payment,
19 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab.
20 Code §§ 1194, 1197, and 1197.1.

21 14. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
22 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
23 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
24 every employer shall furnish each of his or her employees with an accurate itemized wage statement in
25 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during
26 the pay period and the corresponding amount of time worked at each hourly rate. DEFENDANT
27 violates Cal. Lab. Code 226(a)(2) because the total
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1 hours worked column on the wage statements includes hours not actually worked. Also, DEFENDANT
2 violates Cal. Lab. Code 226(a)(9) as to “Retro Pay” because the wage statements only include the total
3 amount and fails to include the total hours or rate. Aside from the violations listed above in this
4 paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists all the
5 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time
6 provides PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which
7 violated Cal. Lab. Code § 226.

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

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

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

19 17. DEFENDANT underpays sick pay wages to PLAINTIFF and other CALIFORNIA
20 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
21 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
22 remuneration, including but not limited to, incentives, shift differential pay, and bonuses. Rather than
23 pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to PLAINTIFF and other
24 CALIFORNIA CLASS Members at their base rates of pay.

25 18. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
26 employees be calculated by dividing the employee’s total wages, not including overtime premium pay,
27 by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

28 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the

1 regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-discretionary
2 incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was paid
3 at the base rate of pay for PLAINTIFF and members of the CALIFORNIA CLASS, as opposed to the
4 correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

5 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other
6 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties
7 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based
8 thereon alleges that such failure to pay sick pay at regular rate was willful, such that PLAINTIFF and
9 members of the CALIFORNIA CLASS whose employment has separated are entitled to waiting time
10 penalties pursuant to Cal. Lab. Code Sections 201-203.

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

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

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

11 24. Specifically as to PLAINTIFF, DEFENDANT fails to provide all the legally required off-
12 duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code and
13 failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT does
14 not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and
15 also fails to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of the
16 work performed by the PLAINTIFF does not prevent PLAINTIFF from being relieved of all of her duties
17 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
18 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business records.
19 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

20 **JURISDICTION AND VENUE**

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

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

3
4 **THE CALIFORNIA CLASS**

5 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
6 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
7 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
8 are or previously were employed by DEFENDANT in California and classified as non-exempt
9 employees (the "CALIFORNIA CLASS") at any time during the period of December 1, 2018 through
10 December 31, 2022 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
11 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 4 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
5 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
6 in place company policies, practices and procedures that failed to record and pay
7 PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
8 worked, including minimum wages owed and overtime wages owed for work
9 performed by these employees; and,
10 (b) Committing an act of unfair competition in violation of the UCL, by failing to
11 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
12 with the legally required meal and rest periods.

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

- 15 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
16 joinder of all such persons is impracticable and the disposition of their claims as
17 a class will benefit the parties and the Court;
18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
19 raised in this Complaint are common to the CALIFORNIA CLASS will apply to
20 every member of the CALIFORNIA CLASS;
21 (c) The claims of the representative PLAINTIFF are typical of the claims of each
22 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
23 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on
24 an hourly basis who was subjected to the DEFENDANT's deceptive practice and
25 policy which failed to provide the legally required meal and rest periods to the
26 CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and
27 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of
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1 DEFENDANT's employment practices. PLAINTIFF and the members of the
2 CALIFORNIA CLASS were and are similarly or identically harmed by the same
3 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical

1 to bring all members of the CALIFORNIA CLASS before the Court;

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

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

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

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

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

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

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

THE CALIFORNIA LABOR SUB-CLASS

37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California and classified as non exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period of December 1, 2018 though December 31, 2022 (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

41. Common questions of law and fact exist as to members of the CALIFORNIA LABOR

1 SUB-CLASS, including, but not limited, to the following:

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

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

- 16 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and
17 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
18 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code
19 § 1194;
- 20 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
21 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
22 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
23 Lab. Code §§ 1194 and 1197;
- 24 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
26 statement in writing showing the corresponding correct amount of wages earned
27 by the employee;

- 1 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS with all
3 legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
4 legally required off-duty rest breaks;
- 5 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
6 employee is discharged or quits from employment, the employer must pay the
7 employee all wages due without abatement, by failing to tender full payment
8 and/or restitution of wages owed or in the manner required by California law to
9 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
10 their employment; and,
- 11 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
12 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred
13 in the discharge of their job duties.

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

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

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

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

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

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

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

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

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

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

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

B. Adjudications with respect to individual members of the

CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that

1 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
2 CLASS before the Court;

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

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

11 (f) There is a community of interest in ensuring that the combined assets of
12 DEFENDANT are sufficient to adequately compensate the members of the
13 CALIFORNIA LABOR 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
18 ascertainable from the business records of DEFENDANT. The CALIFORNIA
19 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who
20 worked for DEFENDANT in California at any time during the CALIFORNIA
21 LABOR SUB-CLASS PERIOD; and,

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

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

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

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

16 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

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

5 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

10 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
11 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without
12 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA
13 LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR
14 SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all
15 earned wages.

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

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

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

74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS 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, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code § 510]

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

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

76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
2 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

6 78 Cal. Lab. Code § 510 further provides that employees in California shall not be employed
7 more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive
8 additional compensation beyond their regular wages in amounts specified by law.

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

13 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
14 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT
15 to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

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

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

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

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

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

26 88. DEFENDANT knew or should have known that PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.

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

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

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

23 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

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

18 101. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
20 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
21 provides that every employer shall furnish each of his or her employees with an accurate itemized wage
22 statement in writing showing, among other things, gross wages earned and all applicable hourly rates
23 in effect during the pay period and the corresponding amount of time worked at each hourly rate.
24 DEFENDANT violates Cal. Lab. Code 226(a)(2) because the total hours worked column on the wage
25 statements includes hours not actually worked. Also, DEFENDANT violates Cal. Lab. Code 226(a)(9)
26 as to “Retro Pay” because the wage statements only include the total amount and fails to include the total
27 hours or rate. Aside from the violations listed above in this paragraph, DEFENDANT fails to issue to
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1 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226
2 *et seq.* As a result, DEFENDANT from time to time provides PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

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

15 16 **SEVENTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 2802]**

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

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

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

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

27 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing
28 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.

1 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
2 for expenses which included, but were not limited to, costs related to using their personal cellular phones
3 on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA
4 LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones
5 in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse
6 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using
7 their personal cellular phones for DEFENDANT within the course and scope of their employment for
8 DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT
9 is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these
10 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-
11 CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
12 LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and
13 regulations of California.

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

18 **EIGHTH CAUSE OF ACTION**

19 **For Failure to Pay Sick Pay Wages**

20 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

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

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

26 108. Cal Lab. Code § 233 provides that an employer must permit an employee to
27 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of
28 entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of

1 accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as
2 paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and
3 compensate based on one of two calculations: (i) “Paid sick time for nonexempt employees shall be
4 calculated in the same manner as the regular rate of pay for the workweek in which the employee uses
5 paid sick time, whether or not the employee actually works overtime in that workweek,” or (ii) “Paid
6 sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not
7 including overtime premium pay, by the employee’s total hours worked in the full pay periods of the
8 prior 90 days of employment.” Under Cal Lab. Code §§ 218 and 233, employees may sue to recover
9 underpaid sick pay wages as damages.

10 109. As a matter of policy and practice, DEFENDANT pays sick pay wages to
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the incorrect rate
12 of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS regularly use
13 accrued sick leave in the workweeks in which they also earn non-hourly remuneration. As a matter of
14 policy and practice, DEFENDANT pays sick pay wages to PLAINTIFF and the other members of the
15 CALIFORNIA LABOR-SUB-CLASS at the base hourly pay, as opposed to the regular rate of pay,
16 which would consider all non-hourly remuneration in addition to base hourly wages, or the rate resulting
17 from dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
18 hours worked in the full pay periods of the prior 90 days of employment. As a result, DEFENDANT
19 underpaid sick pay wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-
20 CLASS.

21 110. Cal. Lab. Code § 204 provides that wages generally are due and payable twice during
22 each calendar month and are to be paid no later than the payday for the next regular payroll period.
23 Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon use of
24 accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for the next
25 regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201
26 provides that if an employer discharges an employee, wages earned and unpaid at the time of discharge
27 are due and payable immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive
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1 all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the
2 employee has given 72-hour notice of his or her intention to quit, in which case the employee is entitled
3 to his or her wages at the time of quitting. The Labor Code penalizes untimely payments. For example,
4 Cal. Lab. Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with
5 Cal. Lab. Code §§ 201-202, then the wages of the employee shall continue as a penalty from the due
6 date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.
7 Likewise, Cal. Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
8 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may sue to
9 recover applicable penalties.

10 111. As alleged herein and as a matter of policy and practice, DEFENDANT routinely
11 underpays sick pay wages and thus did not timely pay PLAINTIFF and the other members of the
12 CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result,
13 DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code
14 provisions. PLAINTIFF is informed and believes that DEFENDANT was advised by skilled lawyers
15 and knew, or should have known, of the mandates of the Labor Code as it relates to PLAINTIFF's
16 allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized
17 that 'wages' also include those benefits to which an employee is entitled as a part of his or her
18 compensation, including money, room, board, clothing, vacation pay, *and sick pay.*" *Murphy v. Kenneth*
19 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully fails
20 to timely pay PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS all sick
21 pay wages due, DEFENDANT is subject to applicable penalties.

22 112. Such a pattern, practice, and uniform administration of corporate policy is
23 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
24 to underpaid sick pay wages, including interest thereon, applicable penalties, attorney's fees, and costs
25 of suit.

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1 **NINTH CAUSE OF ACTION**

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

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

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

5 113. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
6 the prior paragraphs of this Complaint.

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

16 115. PLAINTIFF, and such persons that may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
18 this Representative Action on behalf of the State of California with respect to herself and all individuals
19 who are or previously were employed by DEFENDANT in California and who were classified as non-
20 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of July 9, 2020 through
21 December 31, 2022 (the "PAGA PERIOD").

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

2 117. The policies, acts and practices heretofore described were and are an unlawful business
3 act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
5 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime and sick pay
6 wages, (e) failed to reimburse employees for required expenses, and (f) failed to provide wages when
7 due, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
8 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
9 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
10 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks
11 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
12 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
13 other AGGRIEVED EMPLOYEES.

14
15 **PRAYER FOR RELIEF**

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

18 1. On behalf of the CALIFORNIA CLASS:

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

26
27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

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

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

5 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes
6 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant
7 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 PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR
11 SUB-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
13 a 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
16 of Cal. Lab. Code § 226;

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

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

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

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

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

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

2 4. On all claims:

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

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

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

7 Dated: January 26, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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DEMAND FOR A JURY TRIAL

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

Dated: January 26, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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