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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ALFREDO SILVA and GEORGE
ROSENBERG, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

WOODWARD HRT, INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. **21STCV42692**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698, *et seq.*); and
9. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *et seq.*

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant Woodward HRT, Inc. (“DEFENDANT”) is a corporation that at all
8 relevant times mentioned herein conducted and continues to conduct substantial business in the
9 state of California.

10 2. DEFENDANT Woodward Hrt, Inc. designs and manufactures relays and industrial
11 controls. The Company offers range of products including hydraulic controls, smart actuators,
12 electromechanical systems, photonic controls, electro-hydraulic, turret control and stabilization
13 systems.

14 3. Plaintiff Silva has been employed by DEFENDANT in California since 1996 and
15 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
16 basis, and entitled to the legally required meal and rest periods and payment of minimum and
17 overtime wages due for all time worked.

18 4. Plaintiff Rosenberg has been employed by DEFENDANT in California from
19 September 9, 2009 to September 18, 2020 and was at all times classified by DEFENDANT as
20 a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and
21 rest periods and payment of minimum and overtime wages due for all time worked.

22 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
23 class, defined as all individuals who are or previously were employed by DEFENDANT in
24 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
25 during the period of October 21, 2016 to July 1, 2022 (the “CALIFORNIA CLASS PERIOD”).
26 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under
27 five million dollars (\$5,000,000.00).

28 6. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA

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

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

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

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS are from time to time interrupted by work assignments while clocked out for what should be PLAINTIFFS' off-duty meal break. PLAINTIFFS and CALIFORNIA CLASS Members also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFFS and CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

10. State and federal law provides that employees must be paid overtime and meal and

1 rest break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFFS and
2 other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that
3 is tied to specific elements of an employee’s performance.

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

19 12. As a result of their rigorous work schedules, PLAINTIFFS and other
20 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
21 meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFFS and other
22 CALIFORNIA CLASS Members are required from time to time to perform work as ordered by
23 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
24 Further, DEFENDANT from time to time fails to provide PLAINTIFFS and CALIFORNIA
25 CLASS Members with a second off-duty meal period for some workdays in which these
26 employees are required by DEFENDANT to work ten (10) hours of work. DEFENDANT also
27 engages in the practice of rounding the meal period times to avoid paying penalties to
28 PLAINTIFFS and other CALIFORNIA CLASS Members. PLAINTIFFS and other members

1 of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and
2 in accordance with DEFENDANT's corporate policy and practice.

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

27 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately
28 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount

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

14 15. From time to time, DEFENDANT also fails to provide PLAINTIFFS and the other
15 members of the CALIFORNIA CLASS with complete and accurate wage statements which
16 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
17 226 provides that every employer shall furnish each of his or her employees with an accurate
18 itemized wage statement in writing showing, among other things, gross wages earned and all
19 applicable hourly rates in effect during the pay period and the corresponding amount of time
20 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
21 DEFENDANT fails to issue to PLAINTIFFS an itemized wage statement that lists all the
22 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
23 time provides PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage
24 statements which violated Cal. Lab. Code § 226.

25 16. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
26 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
27 paid not more than seven calendar days following the close of the payroll period. Cal. Lab. Code
28 § 210 provides:

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

7 17. DEFENDANT from time to time fails to pay PLAINTIFFS and members of the
8 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
9 period in accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro Pay
10 Flat” wage payment.

11 18. DEFENDANT underpays sick pay wages to PLAINTIFFS and other
12 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
13 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
14 employees earn non-discretionary remuneration, including but not limited to, incentives, shift
15 differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT
16 underpays sick pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base
17 rates of pay.

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

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

28 21. As a pattern and practice, DEFENDANT regularly failed to pay members of the
CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties pursuant
to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and believe and based

1 thereon allege that such failure to pay sick pay at regular rate was willful, such that members of
2 the CALIFORNIA CLASS whose employment has separated are entitled to waiting time
3 penalties pursuant to Cal. Lab. Code Sections 201-203.

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

14 23. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
15 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
16 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence
17 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
18 2802, employers are required to indemnify employees for all expenses incurred in the course and
19 scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
20 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
21 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
22 directions of the employer, even though unlawful, unless the employee, at the time of obeying
23 the directions, believed them to be unlawful."

24 24. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
25 Members as a business expense, are required by DEFENDANT to use their own personal cellular
26 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
27 are not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their
28 personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFFS and other

1 CALIFORNIA CLASS Members are required by DEFENDANT to use their personal cellular
2 phones. As a result, in the course of their employment with DEFENDANT, PLAINTIFFS and
3 other members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
4 included, but were not limited to, costs related to the use of their personal cellular phones all on
5 behalf of and for the benefit of DEFENDANT.

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

17 26. Furthermore, specifically as to Plaintiff Silva, subsequent to filing the instant
18 lawsuit on November 19, 2021, DEFENDANT has retaliated against Plaintiff Silva by assigning
19 Plaintiff Silva excessive job assignments and tasks, demanding the performance of job duties
20 outside the scope of Plaintiff Silva's job description, isolating and singling Plaintiff Silva out
21 from colleagues, reprimanding Plaintiff Silva for not working overtime, and requiring that
22 Plaintiff Silva be on duty to perform work tasks during Plaintiff Silva's meal and rest breaks. For
23 example, DEFENDANT has increased Plaintiff Silva's workload, including assigning Plaintiff
24 Silva job tasks normally assigned to only salaried, exempt employees, and assigning Plaintiff
25 Silva tasks that require a greater investment of time than is allotted. Further, DEFENDANT has
26 excluded Plaintiff Silva from department meetings, including safety training meetings occurring
27 after safety incidents and has denied Plaintiff Silva safety equipment necessary for the
28 performance of Plaintiff Silva's job tasks. DEFENDANT has required Plaintiff Silva to carry a

1 walkie-talkie on meal and rest breaks and to respond, either via walkie-talkie or on his personal
2 cellular phone, to emails, texts, calls, and messages regarding work while on his meal and rest
3 breaks. Plaintiff Silva engaged in protected activity by filing this lawsuit. As a direct
4 consequence of Plaintiff Silva's filing of the instant lawsuit, DEFENDANT retaliated against
5 Plaintiff Silva by increasing his workload, segregating and singling him out from his colleagues,
6 and attempting to force Plaintiff Silva to quit his employment for relief. The amount in
7 controversy for Plaintiff Silva individually does not exceed the sum or value of \$75,000.

8 9 **JURISDICTION AND VENUE**

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

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

19 20 **THE CALIFORNIA CLASS**

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

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

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

6 31. DEFENDANT, as a matter of company policy, practice and procedure, and in
7 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
8 requirements, and the applicable provisions of California law, intentionally, knowingly, and
9 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
10 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
11 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
12 permits or suffers to permit this work.

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

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

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

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

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

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

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

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

1 protect the interest of the CALIFORNIA CLASS, and have retained
2 counsel who are competent and experienced in Class Action litigation.
3 There are no material conflicts between the claims of the representative
4 PLAINTIFFS and the members of the CALIFORNIA CLASS that would
5 make class certification inappropriate. Counsel for the CALIFORNIA
6 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
7 Members.

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

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

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

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

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

28 1) With respect to the First Cause of Action, the final relief on behalf

1 of the CALIFORNIA CLASS sought does not relate exclusively to
2 restitution because through this claim PLAINTIFFS seek
3 declaratory relief holding that the DEFENDANT's policy and
4 practices constitute unfair competition, along with declaratory
5 relief, injunctive relief, and incidental equitable relief as may be
6 necessary to prevent and remedy the conduct declared to constitute
7 unfair competition;

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

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

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

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

27 B. Adjudications with respect to individual members of the
28 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.

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

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

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

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

1 Court;

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

5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the acts of unfair competition, statutory violations and
7 other improprieties, and in obtaining adequate compensation for the
8 damages and injuries which DEFENDANT's actions have inflicted upon
9 the CALIFORNIA 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
14 to the CALIFORNIA CLASS, thereby making final class-wide relief
15 appropriate with respect to the CALIFORNIA CLASS as a whole;

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

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

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

THE CALIFORNIA LABOR SUB-CLASS

39. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth and Seventh 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 three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (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).

40. 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 PLAINTIFFS 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.

41. 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. PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

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

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

1 LABOR 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
4 for missed meal and rest breaks in violation of the California Labor Code
5 and California regulations and the applicable California Wage Order;
- 6 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
7 members of the CALIFORNIA LABOR SUB-CLASS with accurate
8 itemized wage statements;
- 9 (c) Whether DEFENDANT has engaged in unfair competition by the
10 above-listed 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 44. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
15 under California law by:

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

1 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
2 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
3 meal breaks and the legally required off-duty rest breaks;

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

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

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

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

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

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

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

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

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

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

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

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

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

28 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.

47. 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 it is impractical to bring all members of the CALIFORNIA

LABOR SUB-CLASS before the Court;

- (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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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 PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

15 54. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
16 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANT.

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

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

28 57. PLAINTIFFS further demands on behalf of themselves and each member of the

1 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
2 duty paid rest period was not timely provided as required by law.

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

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

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

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

23 62. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
24 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
25 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
26 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and the
27 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
28 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)**

63. 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.

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

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

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

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

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

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

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

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

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

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

18 73. 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-
20 CLASS for the true time they worked, PLAINTIFFS and the other members of the
21 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
22 injury in amounts which are presently unknown to them and which will be ascertained according
23 to proof at trial.

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

1 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

21
22 **THIRD CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

24 **[Cal. Lab. Code § 510]**

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

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

1 paragraphs of this Complaint.

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

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

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

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

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

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

28 84. In committing these violations of the California Labor Code, DEFENDANT

1 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
2 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
3 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
4 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
5 laws and regulations.

6 85. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
7 the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
8 receive full compensation for overtime worked.

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

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

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

27 89. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
28 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-

1 CLASS for the true amount of time they worked, PLAINTIFFS and the other members of the
2 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
3 injury in amounts which are presently unknown to them and which will be ascertained according
4 to proof at trial.

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

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

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

1 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

2 **FOURTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

27 95. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-

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

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

7
8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 99. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-

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

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

7
8 **SIXTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 226]**

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

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

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

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

103. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the

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

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

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1 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required
2 to do under the laws and regulations of California.

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

7
8 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

24 111. PLAINTIFFS, and such persons that may be added from time to time who
25 satisfy the requirements and exhaust the administrative procedures under the Private
26 Attorney General Act, bring this Representative Action on behalf of the State of California
27 with respect to themselves and all individuals who are or previously were employed by
28 DEFENDANT in California and who were classified as non exempt employees

1 (“AGGRIEVED EMPLOYEES”) during the time period of September 28, 2019 to July 1,
2 2022 (the "PAGA PERIOD").

3 112. On September 28, 2020, more than 65 calendar days before filing his
4 complaint, Plaintiff Rosenberg provided written notice to the Labor and Workforce
5 Development Agency (the “Agency”) and to Defendant of the specific provisions of the
6 California Labor Code that Defendant violated, thereby satisfying the requirements of Labor
7 Code § 2699.3.

8 113. On August 30, 2021, Plaintiff Silva gave written notice by electronic mail to
9 the Agency and by certified mail to the employer of the specific provisions of this code
10 alleged to have been violated as required by Labor Code § 2699.3. The statutory waiting
11 period for Plaintiff Silva to add these allegations to the Complaint expired. As a result,
12 pursuant to Section 2699.3, Plaintiff Silva may pursue a representative civil action under
13 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
14 AGGRIEVED EMPLOYEES as herein defined.

15 114. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
17 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
18 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
19 (d) failed to pay overtime wages and sick pay wages, and (e) failed to reimburse employees
20 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
21 Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2),
22 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
23 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil
24 penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of civil penalties
25 as prescribed by the Labor Code Private Attorney General Act of 2004 as representatives of
26

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

1 the State of California for the illegal conduct perpetrated on PLAINTIFFS and the other
2 AGGRIEVED EMPLOYEES.

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

8
9 **NINTH CAUSE OF ACTION**

10 **Retaliation**

11 **[Violation of Cal. Lab. Code § 1102.5, et seq.]**

12 **(By PLAINTIFFS Against All Defendants)**

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

15 117. At all relevant times, Labor Code section 1102.5 was in effect and was binding on
16 DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee,
17 including PLAINTIFFS, for raising complaints of illegality and/or belief that the employee may
18 disclose illegality.

19 118. Plaintiff Silva filed the instant lawsuit on November 19, 2021. DEFENDANT has
20 retaliated against Plaintiff Silva by assigning Plaintiff Silva excessive job assignments and tasks,
21 demanding the performance of job duties outside the scope of Plaintiff Silva's job description,
22 isolating and singling Plaintiff Silva out from colleagues, reprimanding Plaintiff Silva for not
23 working overtime, and requiring that Plaintiff Silva be on duty to perform work tasks during
24 Plaintiff Silva's meal and rest breaks. For example, DEFENDANT has increased Plaintiff Silva's
25 workload, including assigning Plaintiff Silva job tasks normally assigned to only salaried,
26 exempt employees, and assigning Plaintiff Silva tasks that require a greater investment of time
27 than is allotted. Further, DEFENDANT has excluded Plaintiff Silva from department meetings,
28 including safety training meetings occurring after safety incidents and has denied Plaintiff Silva

1 safety equipment necessary for the performance of Plaintiff Silva's job tasks. DEFENDANT has
2 required Plaintiff Silva to carry a walkie-talkie on meal and rest breaks and to respond, either
3 via walkie-talkie or on his personal cellular phone, to emails, texts, calls, and messages regarding
4 work while on his meal and rest breaks. Plaintiff Silva engaged in protected activity by filing this
5 lawsuit. As a direct consequence of Plaintiff Silva's filing of the instant lawsuit, DEFENDANT
6 retaliated against Plaintiff Silva by increasing his workload, segregating and singling him out
7 from his colleagues, and attempting to force Plaintiff Silva to quit his employment for relief.
8 Plaintiff Silva raised complaints of illegality while he worked for DEFENDANT and was
9 believed to be willing to raise complaints, and DEFENDANT retaliated against him by taking
10 adverse employment actions, including removal from the job site, overwork, and isolating
11 Plaintiff from colleagues and peers, against him.

12 119. Plaintiff Rosenberg was also retaliated against for complaining about what he
13 believed to be unlawful labor practices. On or around September 14, 2020, Plaintiff Rosenberg
14 complained to his supervisor that he was not receiving his overtime and that it was unlawful for
15 him to have worked overtime off the clock. On September 18, 2020, Plaintiff was terminated.
16 Defendant claimed that Plaintiff was not clocked in but received a full day's pay. However,
17 Defendant was well aware that he had signed in with a guest entry key but refused to investigate
18 the matter. Plaintiff believes and thereon alleges that Defendant's refusal to investigate was due
19 to Plaintiff having complained about Defendant's unlawful labor practices regarding its failure
20 to pay overtime. Plaintiff believes and thereon alleges that Defendant's reasons for Plaintiff's
21 termination was pretextual and that his termination was retaliatory for engaging in protected
22 activity.

23 120. As a proximate result of DEFENDANT'S willful, knowing, and intentional
24 violation(s) of Labor Code section 1102.5, PLAINTIFFS have suffered and continue to suffer
25 humiliation, emotional distress, and mental and physical pain and anguish, all to their damage
26 in a sum according to proof.

27 121. As a result of DEFENDANT'S adverse employment actions against PLAINTIFFS,
28 PLAINTIFFS have suffered general and special damages in sums according to proof.

122. DEFENDANT’S misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling PLAINTIFFS to punitive damages against defendants.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period

1 in which a violation occurs and one hundred dollars (\$100) per each member of
2 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
3 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
4 an award of costs for violation of Cal. Lab. Code § 226;

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

7 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
8 1197; and,

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

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

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

15 4. On behalf of PLAINTIFFS for the Ninth Cause of Action:

16 A) For all special damages which were sustained as a result of DEFENDANT'S
17 conduct, including, but not limited to, back pay, front pay, lost compensation and
18 job benefits that PLAINTIFFS would have received but for the retaliatory
19 practices of DEFENDANTS; and,

20 B) For all exemplary damages, according to proof, which were sustained as a result
21 of DEFENDANT'S CONDUCT.

22 5. On all claims:

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

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

25 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
26 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or
27 §2802.
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Dated: August 1, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff Silva

Dated: August 1, 2022 LIM LAW GROUP, P.C.
LAW OFFICES OF LLOYD LEE

By: /s/ Preston H. Lim
Preston H. Lim
Lloyd Lee
Attorneys for Plaintiff Rosenberg

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