

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

06/22/2023

Clerk of the Court

BY: BOWMAN LIU

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

BIANCA CURRY, on behalf of herself
and on behalf of all persons similarly
situated,

Plaintiff,

vs.

UNITED HEALTH CARE STAFFING,
INC., a California Corporation; ON-
CALL THERAPISTS, INC., a California
Corporation; DOES 1 through 50,
inclusive,

Defendants.

Case No. **CGC-21-597339**

(consolidated with Case No. CGC-22-598120)

**FIRST AMENDED CONSOLIDATED 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, 1194 and 1198, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*].

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant United Health Care Staffing, Inc. is a California corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial business in the
8 state of California.

9 2. Defendant On-Call Therapists, Inc. is a California corporation that at all relevant
10 times mentioned herein conducted and continues to conduct substantial business in the state of
11 California.

12 3. Defendants United Health Care Staffing, Inc. and On-Call Therapists, Inc. were the
13 joint employers of PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF
14 performed work for respectively, and are therefore jointly responsible as employers for the
15 conduct alleged herein, and are therefore collectively referred to herein as "DEFENDANT."

16 4. DEFENDANT is a staffing company that provides healthcare services in
17 California.

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

22 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,
23 defined as all individuals who are or previously were employed by United Health Care Staffing,
24 Inc. and/or On-Call Therapists, Inc. in California and classified as a non-exempt employee or
25 alleged to have been misclassified as an independent contractor (the “CALIFORNIA CLASS”)
26 at any time during the period of December 28, 2017 through February 4, 2023 (the
27 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
28 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

12 8. California Labor Code Section 226.8 provides that "[i]t is unlawful for any person
13 or employer to engage in . . . [w]illful misclassification of an individual as an independent
14 contractor." The penalty for willful misclassification of employees is a "civil penalty of not less
15 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
16 each violation, in addition to any other penalties or fines permitted by law." It is further
17 provided that, in the event that an employer is found to have engaged in "a pattern or practice
18 of these violations," the penalties increase to "not less than ten thousand dollars (\$10,000) and
19 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
20 penalties or fines permitted by law." Cal. Labor Code § 226.8.

21 9. Here, DEFENDANT has willfully misclassified certain members of the
22 CALIFORNIA CLASS as independent contractors as described in Cal. Labor Code § 226.8, and
23 further, that DEFENDANT has engaged in a "pattern or practice" of such violations as
24 contemplated by the California Labor Code.

25 10. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
27 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
28 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege

1 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
2 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
3 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
4 responsible in some manner for one or more of the events and happenings that proximately
5 caused the injuries and damages hereinafter alleged.

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

14 THE CONDUCT

15
16 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
17 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including
19 all the time the employee is suffered or permitted to work. PLAINTIFF and CALIFORNIA
20 CLASS Members worked off the clock with respect to time spent undergoing mandatory drug
21 testing or any other testing and/or examination required as a condition of employment.
22 DEFENDANT also required PLAINTIFF and CALIFORNIA CLASS Members to work from
23 time to time while they were clocked out for what was supposed to be their off duty meal break.
24 DEFENDANT required PLAINTIFF and the CALIFORNIA CLASS Members to work off the
25 clock without paying them for all the time they performed duties while on their meal break,
26 specifically by failing to provide enough labor hours to accomplish all the job tasks that
27 DEFENDANT expected PLAINTIFF and CALIFORNIA CLASS Members to complete on a
28 daily and/or weekly basis. Further, during the CALIFORNIA CLASS PERIOD, DEFENDANT

1 required PLAINTIFF and other CALIFORNIA CLASS Members to wait in line and submit to
2 mandatory temperature checks for COVID-19 screening and also complete a COVID-19
3 questionnaire regarding whether these employees had any symptoms prior to clocking into
4 DEFENDANT's timekeeping system for the workday. Finally, PLAINTIFF and other members
5 of the CALIFORNIA CLASS from time to time were not paid wages for all time worked,
6 including overtime wages, such that in the aggregate employees were underpaid wages as a
7 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
8 employees. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
9 minimum wage and overtime compensation by from time to time working without their time
10 being accurately recorded and without compensation at the applicable minimum wage and
11 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
12 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
13 records.

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

26 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
28 (4) hours without being provided ten (10) minute rest periods. Further, these employees were

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

21 15. State law provides that employees must be paid overtime and meal and rest break
22 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
23 CALIFORNIA CLASS Members were compensated at an hourly rate plus incentive pay that
24 was tied to specific elements of an employee's performance.

25 16. The second component of PLAINTIFF's and other CALIFORNIA CLASS
26 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
27 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
28 performance for DEFENDANT. The non-discretionary incentive program provided all

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

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

1 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
2 Code § 226.

3 18. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
4 employment are due and payable twice during each calendar month, on days designated in
5 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
6 requires employers to pay employees all wages owed within seven (7) days of the close of the
7 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
8 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
9 the payroll period,.

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

20 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
21 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
22 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
23 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
24 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
25 Members at their base rates of pay.

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

1 of employment.

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

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

14 24. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
15 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
16 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
17 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
19 and 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 25. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
25 Members as a business expense, were required by DEFENDANT to use their own personal
26 cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
28 associated with the use of their personal cellular phones for DEFENDANT's benefit.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
2 DEFENDANT to use their personal cellular phones to respond to managers while off the clock
3 (which also results in minimum wage and overtime violations). As a result, in the course of
4 their employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
5 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
6 related to the use of their personal cellular phones all on behalf of and for the benefit of
7 DEFENDANT.

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

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

28 28. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally

1 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
2 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
3 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
4 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
5 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
6 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for
7 the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
8 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
9 records. DEFENDANT also required PLAINTIFF to work off the clock without paying
10 PLAINTIFF for all the time PLAINTIFF was working for DEFENDANT, specifically by
11 failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT
12 expected PLAINTIFF to complete on a daily and/or weekly basis. The amount in controversy
13 for PLAINTIFF individually does not exceed the sum or value of \$75,000. To date,
14 DEFENDANT has not fully paid PLAINTIFF for all PLAINTIFF's wages still owed to
15 PLAINTIFF or any penalties owed to PLAINTIFF under California Labor Code § 203.

16 29. With respect to the members of the CALIFORNIA CLASS who were allegedly
17 misclassified as independent contractors, the finite set of tasks required of these CALIFORNIA
18 CLASS Members as defined by DEFENDANT was executed by them through the performance
19 of non-exempt labor.

20 30. With respect to the members of the CALIFORNIA CLASS who were allegedly
21 misclassified as independent contractors, although these CALIFORNIA CLASS Members
22 performed non-exempt labor subject to DEFENDANT's complete control over the manner and
23 means of performance, DEFENDANT instituted a blanket classification policy, practice and
24 procedure by which all of these CALIFORNIA CLASS Members were classified as
25 "independent contractors" exempt from compensation for overtime worked, meal breaks and
26 rest breaks, and reimbursement for business related expenses. By reason of this uniform
27 misclassification, the CALIFORNIA CLASS Members were also required to pay
28 DEFENDANT's share of payroll taxes and mandatory insurance premiums. As a result of this

1 uniform misclassification practice, policy and procedure applicable to these CALIFORNIA
2 CLASS Members who performed this work for DEFENDANT, DEFENDANT committed acts
3 of unfair competition in violation of the California Unfair Competition law, Cal. Bus. & Prof.
4 Code §§ 17200, et seq. (the "UCL"), by engaging in a company-wide policy, practice and
5 procedure which failed to properly classify these CALIFORNIA CLASS Members as
6 employees and thereby failed to pay them wages for all time worked, reimbursement of business
7 related expenses, failed to provide them with meal and rest breaks, and failed to reimburse these
8 employees for the employer's share of payroll taxes and mandatory insurance. The proper
9 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's
10 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
11 California Labor Code and regulations promulgated thereunder as herein alleged.

12 13 **JURISDICTION AND VENUE**

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

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

24 25 **THE CALIFORNIA CLASS**

26 33. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
27 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class
28 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all

1 individuals who are or previously were employed by United Health Care Staffing, Inc. and/or
2 On-Call Therapists, Inc. in California and classified as a non-exempt employee or alleged to
3 have been misclassified as an independent contractor (the "CALIFORNIA CLASS") at any time
4 during the period of December 28, 2017 through February 4, 2023 (the "CALIFORNIA CLASS
5 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
6 Members is under five million dollars (\$5,000,000.00).

7 34. To the extent equitable tolling operates to toll claims by the CALIFORNIA
8 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
9 accordingly.

10 35. DEFENDANT, as a matter of company policy, practice and procedure, and in
11 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
12 requirements, and the applicable provisions of California law, intentionally, knowingly, and
13 wilfully, engages in a practice whereby DEFENDANT fails to record all meal and rest breaks
14 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
15 DEFENDANT enjoys the benefit of this work, requires employees to perform this work and
16 permits or suffers to permit this work.

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

26 37. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.

28 38. DEFENDANT violated the rights of the CALIFORNIA CLASS under California

1 law by:

- 2 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
3 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
4 deceptively having in place company policies, practices and procedures
5 that failed to record and pay PLAINTIFF and the other members of the
6 CALIFORNIA CLASS for all time worked minimum wages owed and
7 overtime wages owed for work performed by these employees;
- 8 (b) Committing an act of unfair competition in violation of the UCL, by
9 failing to provide the PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with the legally required meal and rest periods;
11 and,
- 12 (c) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
14 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
15 the CALIFORNIA CLASS members with necessary expenses incurred in
16 the discharge of their job duties.
- 17 (d) With respect to the CALIFORNIA CLASS MEMBERS who were
18 classified as independent contractors, for violating the California Unfair
19 Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* in that
20 DEFENDANT, while acting as employer, devised and implemented a
21 scheme whereby these CALIFORNIA CLASS Members are forced to
22 unlawfully, unfairly and deceptively shoulder the cost of DEFENDANT's
23 wages for all unpaid wages, business related expenses, and
24 DEFENDANT's share of employment taxes, social security taxes,
25 unemployment insurance and workers' compensation insurance;
- 26 (b) With respect to the CALIFORNIA CLASS MEMBERS who were
27 classified as independent contractors, for violating the California Unfair
28 Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* by

1 unlawfully, unfairly and/or deceptively having in place company policies,
2 practices and procedures that uniformly misclassified these
3 CALIFORNIA CLASS Members as independent contractors;

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

- 6 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
7 that the joinder of all such persons is impracticable and the disposition of
8 their claims as a class will benefit the parties and the Court;
- 9 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
10 that are raised in this Complaint are common to the CALIFORNIA
11 CLASS will apply to every member of the CALIFORNIA CLASS;
- 12 (c) The claims of the representative PLAINTIFF are typical of the claims of
13 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
14 other members of the CALIFORNIA CLASS, is classified as a non-
15 exempt employee paid on an hourly basis who has been subjected to the
16 DEFENDANT's deceptive practice and policy which failed to provide the
17 legally required meal and rest periods to the CALIFORNIA CLASS and
18 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
19 CLASS. PLAINTIFF sustained economic injury as a result of
20 DEFENDANT's employment practices. PLAINTIFF and the members
21 of the CALIFORNIA CLASS were and are similarly or identically harmed
22 by the same unlawful, deceptive, unfair and pervasive pattern of
23 misconduct engaged in by DEFENDANT;
- 24 (d) The representative PLAINTIFF will fairly and adequately represent and
25 protect the interest of the CALIFORNIA CLASS, and has retained
26 counsel who are competent and experienced in Class Action litigation.
27 There are no material conflicts between the claims of the representative
28 PLAINTIFF and the members of the CALIFORNIA CLASS that would

1 make class certification inappropriate. Counsel for the CALIFORNIA
2 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
3 Members.

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

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

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

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

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

24 1) With respect to the First Cause of Action, the final relief on behalf
25 of the CALIFORNIA CLASS sought does not relate exclusively to
26 restitution because through this claim PLAINTIFF seeks
27 declaratory relief holding that the DEFENDANT's policy and
28 practices constitute unfair competition, along with declaratory

1 relief, injunctive relief, and incidental equitable relief as may be
2 necessary to prevent and remedy the conduct declared to constitute
3 unfair competition;

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

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

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

19 A. Inconsistent or varying adjudications with respect to
20 individual members of the CALIFORNIA CLASS, which
21 would establish incompatible standards of conduct for the
22 DEFENDANT; and/or,

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

28 3) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA CLASS Members will avoid asserting
2 their legal rights out of fear of retaliation by DEFENDANT, which
3 may adversely affect an individual's job with DEFENDANT or
4 with a subsequent employer, the Class Action is the only means to
5 assert their claims through a representative; and,

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

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

- 13 (a) The questions of law and fact common to the CALIFORNIA CLASS
14 predominate over any question affecting only individual CALIFORNIA
15 CLASS Members because the DEFENDANT's employment practices are
16 applied with respect to the CALIFORNIA CLASS;
- 17 (b) A Class Action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the CALIFORNIA
19 CLASS because in the context of employment litigation a substantial
20 number of individual CALIFORNIA CLASS Members will avoid
21 asserting their rights individually out of fear of retaliation or adverse
22 impact on their employment;
- 23 (c) The members of the CALIFORNIA CLASS are so numerous that it is
24 impractical to bring all members of the CALIFORNIA CLASS before the
25 Court;
- 26 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
27 able to obtain effective and economic legal redress unless the action is
28 maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations and
3 other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
10 to the CALIFORNIA CLASS, thereby making final class-wide relief
11 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 12 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
13 the business records of DEFENDANT; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to bring
15 a efficient and rapid conclusion to all litigation of all wage and hour
16 related claims arising out of the conduct of DEFENDANT as to the
17 members of the CALIFORNIA CLASS.

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

23 43. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
24 Eighth Causes of Action on behalf of the CALIFORNIA CLASS during the CALIFORNIA
25 CLASS PERIOD pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
26 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
27 (\$5,000,000.00).

28 44. DEFENDANT, as a matter of company policy, practice and procedure, and in

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

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

16 46. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
17 CLASS Members is impracticable.

18 47. Common questions of law and fact exist as to members of the CALIFORNIA
19 CLASS, including, but not limited, to the following:

- 20 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
21 compensation due to members of the CALIFORNIA CLASS for missed
22 meal and rest breaks in violation of the California Labor Code and
23 California regulations and the applicable California Wage Order;
- 24 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
25 members of the CALIFORNIA CLASS with accurate itemized wage
26 statements;
- 27 (c) Whether DEFENDANT has engaged in unfair competition by the
28 above-listed conduct;

- 1 (d) The proper measure of damages and penalties owed to the members of the
2 CALIFORNIA CLASS;
- 3 (e) Whether DEFENDANT's conduct was willful;
- 4 (f) Whether the CALIFORNIA CLASS Members classified as independent
5 contractors were misclassified by DEFENDANT;
- 6 (g) Whether the CALIFORNIA CLASS Members classified as independent
7 contractors were all afforded all the protections of the California Labor
8 Code that apply when properly classified as non-exempt employees;
- 9 (h) Whether DEFENDANT's policies, practices and pattern of conduct
10 described in this Complaint was and is unlawful; and,
- 11 (i) Whether, with respect to the CALIFORNIA CLASS Members classified
12 as independent contractors, DEFENDANT unlawfully failed to pay their
13 share of state and federal employment taxes as required by state and
14 federal tax laws.

15 48. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
16 law by:

- 17 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
18 PLAINTIFF and the members of the CALIFORNIA CLASS all wages
19 due for overtime worked, for which DEFENDANT is liable pursuant to
20 Cal. Lab. Code § 1194;
- 21 (b) With respect to the members of the CALIFORNIA CLASS who were
22 classified as independent contractors, violating Cal. Lab. Code §§ 510, et
23 seq., by misclassifying and thereby failing to pay these members of the
24 CALIFORNIA CLASS the correct overtime pay for a workday longer
25 than eight (8) hours and/or a workweek longer than forty (40) hours for
26 which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 27 (c) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
28 accurately pay PLAINTIFF and the members of the CALIFORNIA

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

3 (d) With respect to the members of the CALIFORNIA CLASS who were
4 classified as independent contractors, violating Cal. Lab. Code §§ 1194,
5 1197 & 1197.1 et seq., by misclassifying and thereby failing to pay these
6 members of the CALIFORNIA CLASS the correct minimum wages for
7 which DEFENDANT is liable;

8 (e) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
9 members of the CALIFORNIA CLASS with an accurate itemized
10 statement in writing showing the corresponding correct amount of wages
11 earned by the employee;

12 (f) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
13 PLAINTIFF and the other members of the CALIFORNIA CLASS with
14 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
15 and the legally required off-duty rest breaks; and,

16 (g) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
17 the CALIFORNIA CLASS members with necessary expenses incurred in
18 the discharge of their job duties.

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

21 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
22 that the joinder of all CALIFORNIA CLASS Members is impracticable
23 and the disposition of their claims as a class will benefit the parties and the
24 Court;

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

28 (c) The claims of the representative PLAINTIFF are typical of the claims of

1 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
2 other members of the CALIFORNIA CLASS, is a non-exempt employee
3 paid on an hourly basis who has been subjected to the DEFENDANT's
4 practice and policy which fails to pay the correct amount of wages due to
5 the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
6 result of DEFENDANT's employment practices. PLAINTIFF and the
7 members of the CALIFORNIA CLASS were and are similarly or
8 identically harmed by the same unlawful, deceptive, unfair and pervasive
9 pattern of misconduct engaged in by DEFENDANT; and,

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

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

- 20 (a) Without class certification and determination of declaratory, injunctive,
21 statutory and other legal questions within the class format, prosecution of
22 separate actions by individual members of the CALIFORNIA CLASS will
23 create the risk of:
- 24 1) Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA CLASS which would establish
26 incompatible standards of conduct for the parties opposing the
27 CALIFORNIA CLASS; or,
- 28 2) Adjudication with respect to individual members of the

CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA 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 CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA 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 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 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 CLASS, which would establish incompatible standards of conduct for the

1 DEFENDANT; and/or,

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

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

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

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

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

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

- 1 (c) The members of the CALIFORNIA CLASS are so numerous that it is
2 impractical to bring all members of the CALIFORNIA CLASS before the
3 Court;
- 4 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
5 able to obtain effective and economic legal redress unless the action is
6 maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the acts of unfair competition, statutory violations and
9 other improprieties, and in obtaining adequate compensation for the
10 damages and injuries which DEFENDANT's actions have inflicted upon
11 the CALIFORNIA CLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of
14 the CALIFORNIA CLASS for the injuries sustained;
- 15 (g) DEFENDANT has acted or refused to act on grounds generally applicable
16 to the CALIFORNIA CLASS, thereby making final class-wide relief
17 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 18 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
19 the business records of DEFENDANT. The CALIFORNIA CLASS
20 consists of all CALIFORNIA CLASS Members who worked for
21 DEFENDANT in California at any time during the CALIFORNIA
22 CLASS PERIOD; and,
- 23 (i) Class treatment provides manageable judicial treatment calculated to bring
24 a efficient and rapid conclusion to all litigation of all wage and hour
25 related claims arising out of the conduct of DEFENDANT as to the
26 members of the CALIFORNIA CLASS.
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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 52. 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
7 Complaint.

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

19 55. 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, 226.8, 246, 248.5, 510, 512, 1194, 1197,
23 1197.1, 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
24 thereunder, for which this Court should issue declaratory and other equitable relief pursuant to
25 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
26 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

27 61. PLAINTIFF further demands on behalf of herself and each member of the
28 CALIFORNIA CLASS, one (1) hour of pay for each workday in which an off duty paid rest

1 period was not timely provided as required by law.

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

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

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

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

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

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1 practice that denies accurate compensation to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS in regards to minimum wage pay.

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

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

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

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

25 78. DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA CLASS are under compensated for their time worked.
27 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
28 employees for their labor as a matter of company policy, practice and procedure, and

1 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
2 of the CALIFORNIA CLASS the correct reporting time pay and minimum wages for their time
3 worked.

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

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

18
19 **THIRD CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

21 **[Cal. Lab. Code § 510, 1194 and 1198, et seq.]**

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

23 81. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though full set forth herein, the prior paragraphs of this
25 Complaint.

26 82. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT's willful and intentional violations of the California Labor Code and the
28 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these

1 employees for all overtime worked, including, work performed in excess of eight (8) hours in
2 a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

14 86. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and CALIFORNIA
15 CLASS Members are required, permitted or suffered by DEFENDANT to work for
16 DEFENDANT and are not paid for all the time they work, including overtime work.

17 87. With respect to the CALIFORNIA CLASS Members who were classified as
18 independent contractors, DEFENDANT knew or should have known that these CALIFORNIA
19 CLASS Members were members were misclassified as independent contractors and
20 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, not to pay
21 them for their labor as a matter of corporate policy, practice and procedure.

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

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

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

10 91. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
11 the PLAINTIFF and the other members of the CALIFORNIA CLASS are not receiving full
12 compensation for overtime worked.

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

21 93. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and the other members
22 of the CALIFORNIA CLASS are paid less for overtime worked that they are entitled to,
23 constituting a failure to pay all earned wages.

24 94. DEFENDANT fails to accurately pay the PLAINTIFF and the other members of
25 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
26 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198,
27 even though PLAINTIFF and the other members of the CALIFORNIA CLASS are required to
28 work, and did in fact work, overtime as to which DEFENDANT fails to accurately record and

1 pay as evidenced by DEFENDANT's business records and witnessed by employees.

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

7 96. DEFENDANT knew or should have known that PLAINTIFF and the other
8 members of the CALIFORNIA CLASS are under compensated for all overtime worked.
9 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
10 employees for their labor as a matter of company policy, practice and procedure, and
11 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
12 of the CALIFORNIA CLASS for overtime worked.

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

21 98. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
22 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as
23 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. DEFENDANT's conduct as alleged
25 herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
26 CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

5 99. 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
7 Complaint.

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

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

28 102. As a proximate result of the aforementioned violations, PLAINTIFF and

1 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
2 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

3
4 **FIFTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

21 105. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
22 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
23 who are not provided a rest period, in accordance with the applicable Wage Order, one
24 additional hour of compensation at each employee's regular rate of pay for each workday that
25 rest period was not provided.

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

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SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

(1) gross wages earned,

(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) 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,

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

(5) net wages earned,

(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.

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

20 110. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code
21 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
22 CLASS. These damages include, but are not limited to, costs expended calculating the correct
23 wages for all missed meal and rest breaks and the amount of employment taxes which were not
24 properly paid to state and federal tax authorities. These damages are difficult to estimate.
25 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to
26 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
27 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
28 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial

(but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

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

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

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

113. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which include, but are not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members are required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT's policy, practice and procedure is to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses are necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and

1 the CALIFORNIA CLASS members, DEFENDANT fails to indemnify and reimburse
2 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is
3 required to do under the laws and regulations of California.

4 114. PLAINTIFF therefore demands reimbursement for expenditures or losses
5 incurred by them and the CALIFORNIA CLASS members in the discharge of their job
6 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
7 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

8
9 **EIGHTH CAUSE OF ACTION**

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

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

12 **(By PLAINTIFF and the CALIFORNIA CLASS**

13 **and Against All Defendants)**

14 115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
15 and incorporate by reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 116. Cal. Lab. Code § 200 provides, in relevant part, that:

18 As used in this article:

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

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

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

25 118. Cal. Lab. Code § 202 provides, in relevant part, that:

26 If an employee not having a written contract for a definite period quits his
27 or her employment, his or her wages shall become due and payable not
later than 72 hours thereafter, unless the employee has given 72 hours
previous notice of his or her intention to quit, in which case the employee
28 is entitled to his or her wages at the time of quitting. Notwithstanding any

1 other provision of law, an employee who quits without providing a 72-
2 hour notice shall be entitled to receive payment by mail if he or she so
3 requests and designates a mailing address. The date of the mailing shall
constitute the date of payment for purposes of the requirement to provide
payment within 72 hours of the notice of quitting.

4 119. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
5 Members' employment contract.

6 120. Cal. Lab. Code § 203 provides, in relevant part, that:

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

10 121. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
11 has terminated and DEFENDANT has not tendered payment of all wages owed as required
12 by law.

13 122. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
14 members of the CALIFORNIA CLASS whose employment has terminated and who have
15 not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay as
16 penalty for not paying all wages due at time of termination for all employees who
17 terminated employment during the CALIFORNIA CLASS PERIOD and demands an
18 accounting and payment of all wages due, plus interest and statutory costs as allowed by
19 law.
20

21 **NINTH CAUSE OF ACTION**

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

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

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

25 123. PLAINTIFF incorporates by reference the allegations set forth in the prior
26 paragraphs as though fully set forth at this point.

27 124. PAGA is a mechanism by which the State of California itself can enforce state
28

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

10 125. PLAINTIFF, and such persons that may be added from time to time who
11 satisfy the requirements and exhaust the administrative procedures under the Private
12 Attorney General Act, brings this Representative Action on behalf of the State of California
13 with respect to herself and all individuals who were employed by DEFENDANT in
14 California and classified as a non-exempt employee or alleged to have been misclassified as
15 an independent contractor (the "AGGRIEVED EMPLOYEES") at any time during the
16 period of August 27, 2020 through February 4, 2023 (the "PAGA PERIOD").

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

25 127. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
28 properly record and provide legally required meal and rest periods, (c) failed to pay

1 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
2 reimburse employees for required expenses, and (f) failed to pay wages when due, all in
3 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
4 et seq., 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
5 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
6 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
7 conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
8 Code Private Attorney General Act of 2004 as the representative of the State of California
9 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES.

11 128. All of the conduct and violations alleged herein occurred during the PAGA
12 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
13 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
14 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*,
15 30 Cal.App.5th 504 (2018).

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18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
20 severally, as follows:

- 21 1. On behalf of the CALIFORNIA CLASS:
- 22 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
23 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 24 B) An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 26

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

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS; and,
4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

7 2. On behalf of the CALIFORNIA CLASS:

- 8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
9 Causes of Action asserted by the CALIFORNIA CLASS as a class action
10 pursuant to Cal. Code of Civ. Proc. § 382;
11 B) Compensatory damages, according to proof at trial, including compensatory
12 damages for minimum and overtime compensation due PLAINTIFF and the other
13 members of the CALIFORNIA CLASS, during the applicable CALIFORNIA
14 CLASS PERIOD plus interest thereon at the statutory rate;
15 C) Meal and rest period compensation pursuant to California Labor Code Section
16 226.7 and the applicable IWC Wage Order;
17 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
18 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
19 in which a violation occurs and one hundred dollars (\$100) per each member of
20 the CALIFORNIA CLASS for each violation in a subsequent pay period, not
21 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award
22 of costs for violation of Cal. Lab. Code § 226;
23 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
24 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
25 costs of suit; and,
26 G) The wages of all terminated employees in the CALIFORNIA LABOR
27 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
28 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

1 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
2 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
3 General Act of 2004.

4 4. On all claims:

- 5 A) An award of interest, including prejudgment interest at the legal rate;
6 B) Such other and further relief as the Court deems just and equitable; and,
7 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
8 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
9 §2802.

10
11 Dated: June 22, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

12
13 By: /s/ Norman Blumenthal
14 Norman B. Blumenthal
15 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: June 22, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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