

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

KACEY MATTHEWS, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

DEJON ENTERPRISES, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 30-2021-01236088-CU-OE-CXC

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

4
5 **THE PARTIES**

6 1. Defendant Dejon Enterprises, Inc. (“DEFENDANT”) is a 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 owns and operates McDonald’s restaurants in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from October of 2020
11 to September 8, 2021 and was at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 who were classified as hourly, non-exempt employees (the “CALIFORNIA CLASS”) at any
17 time during the period December 14, 2017 to December 11, 2022 or preliminary approval,
18 whichever is sooner (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for
19 the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
20 (\$5,000,000.00).

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

1 the other members of the CALIFORNIA CLASS who have been economically injured by
2 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
3 equitable relief.

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

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

21 **THE CONDUCT**

22
23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
27 and CALIFORNIA CLASS Members to work without paying them for all the time they are
28 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to

1 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
2 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
3 should be PLAINTIFF's off-duty meal break. PLAINTIFF and CALIFORNIA CLASS
4 Members also worked off the clock with respect to time spent undergoing mandatory drug
5 testing or any other testing and/or examination required as a condition of employment.
6 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
7 practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA
8 CLASS Members, always to the benefit of DEFENDANT, so that during the course of their
9 employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would
10 have been paid had they been paid for actual recorded time rather than "rounded" time.
11 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and
12 CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a
13 condition of employment, required these employees to submit to mandatory temperature checks
14 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
15 timekeeping system for the workday. As a result, PLAINTIFF and other CALIFORNIA
16 CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal
17 breaks by working without their time being correctly recorded and without compensation at the
18 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
19 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
20 business records.

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

25 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
26 Members' compensation is 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 meal and rest break premiums to PLAINTIFF and other
4 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation
5 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
6 meal and rest break premium pay. Management and supervisors described the incentive
7 program to potential and new employees as part of the compensation package. As a matter of
8 law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
9 Members must be included in the "regular rate of pay." The failure to do so has resulted in a
10 underpayment of overtime compensation and meal and rest break premiums to PLAINTIFF and
11 other CALIFORNIA CLASS Members by DEFENDANT.

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

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

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

16 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
17 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
18 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
19 DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members
20 for all time worked, meaning the time during which an employee was subject to the control of
21 an employer, including all the time the employee was permitted or suffered to permit this work.
22 DEFENDANT required these employees to work off the clock without paying them for all the
23 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
24 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
25 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
26 Members forfeited time worked by working without their time being accurately recorded and
27 without compensation at the applicable minimum wage and overtime wage rates. To the extent
28 that the time worked off the clock does not qualify for overtime premium payment,

1 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
2 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

25 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
26 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
27 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to the
28 “Retro Pay Flat” wage payment.

17 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
18 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
19 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt

1 employees earned non-discretionary remuneration, including but not limited to, incentives, shift
2 differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
3 DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS Members
4 at their base rates of pay.

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

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

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

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

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

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

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

24 24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
25 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
26 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
27 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
28 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for

1 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
2 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for
3 the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
4 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
5 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or
6 value of \$75,000.

7 **JURISDICTION AND VENUE**

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

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

17 **THE CALIFORNIA CLASS**

18 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
20 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
21 all individuals who are or previously were employed by DEFENDANT in California and
22 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
23 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
24 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
25 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
26 (\$5,000,000.00).
27
28

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

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

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

20 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

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

- 24 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
25 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
26 deceptively having in place company policies, practices and procedures
27 that failed to record and pay PLAINTIFF and the other members of the
28 CALIFORNIA CLASS for all time worked, including minimum wages

1 owed and overtime wages owed for work performed by these employees;
2 and,

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

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

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

1 There are no material conflicts between the claims of the representative
2 PLAINTIFF and the members of the CALIFORNIA CLASS that would
3 make class certification inappropriate. Counsel for the CALIFORNIA
4 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
5 Members.

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

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

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

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

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

26 1) With respect to the First Cause of Action, the final relief on behalf
27 of the CALIFORNIA CLASS sought does not relate exclusively to
28 restitution because through this claim PLAINTIFF seeks

1 declaratory relief holding that the DEFENDANT's policy and
2 practices constitute unfair competition, along with declaratory
3 relief, injunctive relief, and incidental equitable relief as may be
4 necessary to prevent and remedy the conduct declared to constitute
5 unfair competition;

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

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

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

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

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

ability to protect their interests;

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

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

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

1 able to obtain effective and economic legal redress unless the action is
2 maintained as a Class Action;

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

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

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

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

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

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

25
26 **THE CALIFORNIA LABOR SUB-CLASS**

27 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
28 Eighth causes Action on behalf of a California sub-class, defined as all members of the

1 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
2 and classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
3 time during the period three (3) years prior to the filing of the complaint and ending on the date
4 as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant
5 to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
6 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

28 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay

1 compensation due to members of the CALIFORNIA LABOR SUB-
2 CLASS for missed meal and rest breaks in violation of the California
3 Labor Code and California regulations and the applicable California Wage
4 Order;

5 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS with accurate
7 itemized wage statements;

8 (c) Whether DEFENDANT has engaged in unfair competition by the
9 above-listed conduct;

10 (d) The proper measure of damages and penalties owed to the members of the
11 CALIFORNIA LABOR SUB-CLASS; and,

12 (e) Whether DEFENDANT's conduct was willful.

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

15 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
16 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
17 CLASS all wages due for overtime worked, for which DEFENDANT is
18 liable pursuant to Cal. Lab. Code § 1194;

19 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
20 accurately pay PLAINTIFF and the members of the CALIFORNIA
21 LABOR SUB-CLASS the correct minimum wage pay for which
22 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

23 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
24 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
25 itemized statement in writing showing the corresponding correct amount
26 of wages earned by the employee;

27 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
2 meal breaks and the legally required off-duty rest breaks;

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

9 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
10 the CALIFORNIA LABOR SUB-CLASS members with necessary
11 expenses incurred in the discharge of their job duties.

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

14 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
15 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
16 Members is impracticable and the disposition of their claims as a class
17 will benefit the parties and the Court;

18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
19 that are raised in this Complaint are common to the CALIFORNIA
20 LABOR SUB-CLASS and will apply to every member of the
21 CALIFORNIA LABOR SUB-CLASS;

22 (c) The claims of the representative PLAINTIFF are typical of the claims of
23 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
24 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
25 was a non-exempt employee paid on an hourly basis who was subjected
26 to the DEFENDANT's practice and policy which failed to pay the correct
27 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
28 PLAINTIFF sustained economic injury as a result of DEFENDANT's

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

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

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

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

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

- 28 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted

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

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

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

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

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

27 B. Adjudications with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS would as a practical

1 matter be dispositive of the interests of the other members
2 not parties to the adjudication or substantially impair or
3 impede their ability to protect their interests;

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

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

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

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

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

27 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
28 numerous that it is impractical to bring all members of the CALIFORNIA

LABOR SUB-CLASS before the Court;

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

///

///

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

10 48. 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 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California
22 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 119,
23 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
24 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
25 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
26 unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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

1 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
2 engage in these unlawful and unfair business practices.

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

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

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

8 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

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

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

26 72. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
28 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,

1 to not pay employees for their labor as a matter of company policy, practice and procedure, and
2 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
3 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

23
24 **THIRD CAUSE OF ACTION**

25 **For Failure To Pay Overtime Compensation**

26 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

24 81. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
25 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
26 a policy and practice that failed to accurately record overtime worked by PLAINTIFF and other
27 CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime

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

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

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

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

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

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

1 witnessed by employees.

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

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

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

22 90. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
24 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
25 by the California Labor Code and/or other applicable statutes. To the extent minimum and/or
26 overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
27 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
28 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time

1 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
2 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
3 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
4 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

5
6 **FOURTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

1 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

1 periods by DEFENDANT and DEFENDANT's managers.

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

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

11 **SIXTH CAUSE OF ACTION**

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

13 **[Cal. Lab. Code § 226]**

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

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

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

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

1 employee identification number other than a social security number may be shown on
2 the itemized statement,
3 (8) the name and address of the legal entity that is the employer, and
4 (9) all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

6 101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
8 wage statements which failed to show, among other things, the correct gross and net wages
9 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
10 employees with an accurate itemized wage statement in writing showing, among other
11 things, gross wages earned and all applicable hourly rates in effect during the pay period and
12 the corresponding amount of time worked at each hourly rate. Aside, from the violations
13 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized
14 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
15 result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
17 § 226.

18 102. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
19 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
20 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
21 expended calculating the correct wages for all missed meal and rest breaks and the amount
22 of employment taxes which were not properly paid to state and federal tax authorities.
23 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
24 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
25 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
26 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
27 226, in an amount according to proof at the time of trial (but in no event more than four
28 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
CALIFORNIA LABOR SUB-CLASS herein).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

4 106. PLAINTIFF therefore demands reimbursement for expenditures or losses
5 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
6 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
7 with 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 LABOR SUB-CLASS**
13 **and Against All Defendants)**

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

17 108. 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
20 every description, whether the amount is fixed or ascertained by the
21 standard of time, task, piece, Commission basis, or other method of calculation.

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

26 109. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer
27 discharges an employee, the wages earned and unpaid at the time of discharge are due and
28 payable immediately."

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

If an employee not having a written contract for a definite period quits his
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
is entitled to his or her wages at the time of quitting. Notwithstanding any
other provision of law, an employee who quits without providing a 72-

1 hour notice shall be entitled to receive payment by mail if he or she so
2 requests and designates a mailing address. The date of the mailing shall
3 constitute the date of payment for purposes of the requirement to provide
4 payment within 72 hours of the notice of quitting.

5 111. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
6 SUB-CLASS Members' employment contract.

7 112. Cal. Lab. Code § 203 provides, in relevant part, that:

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

14 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
15 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
16 owed as required by law.

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

24 **NINTH CAUSE OF ACTION**

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

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

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

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

116. PAGA is a mechanism by which the State of California itself can enforce state
labor laws through the employee suing under the PAGA who do so as the proxy or agent of
the state's labor law enforcement agencies. An action to recover civil penalties under

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

8 117. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to
11 herself and all individuals who are or previously were employed by Defendant Dejon
12 Enterprises, Inc. ("DEFENDANT") in California who were classified as hourly, non-exempt
13 employees during the period December 14, 2020 to December 11, 2022 or preliminary
14 approval, whichever is sooner (the "PAGA PERIOD").

15 118. On September 10, 2021, PLAINTIFF gave written notice by electronic mail to
16 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
17 employer of the specific provisions of this code alleged to have been violated as required by
18 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
19 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
20 now commence a representative civil action under PAGA pursuant to Section 2699 as the
21 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
22 defined.

23 119. The policies, acts and practices heretofore described were and are an unlawful
24 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
25 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
26 properly record and provide legally required meal and rest periods, (c) failed to pay
27 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
28 reimburse employees for required expenses, and (f) failed to provide wages when due, all in

1 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
2 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
3 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
4 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
5 conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
6 Code Private Attorney General Act of 2004 as the representative of the State of California
7 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES.

9 120. All of the conduct and violations alleged herein occurred during the PAGA
10 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
11 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
12 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
13 AJDAR 12157 (Certified for Publication 12/19/18).

14 **PRAYER FOR RELIEF**

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

17 1. On behalf of the CALIFORNIA CLASS:

- 18 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
19 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
20 B) An order temporarily, preliminarily and permanently enjoining and restraining
21 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
22 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
23 withheld from compensation due to PLAINTIFF and the other members of the
24 CALIFORNIA CLASS; and,
25 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
26

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

1 for restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 4 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
5 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
6 action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 B) Compensatory damages, according to proof at trial, including compensatory
8 damages for minimum and overtime compensation due PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
10 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
11 statutory rate;
- 12 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
13 in which a violation occurs and one hundred dollars (\$100) per each member of
14 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
15 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
16 an award of costs for violation of Cal. Lab. Code § 226;
- 17 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
18 the applicable IWC Wage Order;
- 19 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
20 1197;
- 21 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
22 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
23 costs of suit.; and,
- 24 G) The wages of all terminated employees in the CALIFORNIA LABOR
25 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
26 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

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

3 4. On all claims:

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

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

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

9
10 Dated: November 23, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

11
12
13 By: /s/ Norman B. Blumenthal

14 Norman B. Blumenthal
15 Attorneys for Plaintiff
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DEMAND FOR A JURY TRIAL

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

Dated: November 23, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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