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FILEDSuperior Court of California
County of Los Angeles**04/25/2023**

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy**SUPERIOR COURT OF THE STATE OF CALIFORNIA****IN AND FOR THE COUNTY OF LOS ANGELES**ANDREW KING, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

DAY MANAGEMENT CORPORATION (DBA)
DAY WIRELESS SYSTEMS, a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.22STCV01620

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and
9. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B)

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant Day Management Corporation (DBA) Day Wireless Systems
8 (“DEFENDANT”) is a corporation that at all relevant times mentioned herein conducted and
9 continues to conduct substantial business in the state of California.

10 2. DEFENDANT is part of the Electronic and Precision Equipment Repair and
11 Maintenance Industry.

12 3. PLAINTIFF was employed by DEFENDANT from December of 2015 to May of
13 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
14 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
15 and overtime wages due for all time worked.

16 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
17 defined as all individuals who are or previously worked for Defendant Day Management
18 Corporation (DBA) Day Wireless Systems in California who were classified as non-exempt (the
19 “CALIFORNIA CLASS”) and who worked during the period January 14, 2018 to the earlier
20 of the date of an order approving Plaintiff’s motion for preliminary approval, or June 1, 2023
21 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim
22 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

23 **THE CONDUCT**

24
25 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
26 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF

1 and CALIFORNIA CLASS Members to work from time to time while they were clocked out
2 for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF
3 and the CALIFORNIA CLASS Members to work off the clock without paying them for all the
4 time they performed duties while on their meal break, specifically by failing to provide enough
5 labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and
6 CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. PLAINTIFF and
7 CALIFORNIA CLASS Members also worked off the clock with respect to time spent
8 undergoing mandatory drug testing or any other testing and/or examination required as a
9 condition of employment. Additionally, DEFENDANT engaged in the practice of requiring
10 PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clock in that
11 DEFENDANT, as a condition of employment, required these employees to submit to mandatory
12 Covid-19 screening questions prior to arriving to the work site for and prior to clocking into
13 DEFENDANT's timekeeping system for the workday. Further, PLAINTIFF and other members
14 of the CALIFORNIA CLASS from time to time were not paid wages for all time worked,
15 including overtime wages, such that in the aggregate employees were underpaid wages as a
16 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
17 employees. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
18 minimum wage and overtime compensation by from time to time working without their time
19 being accurately recorded and without compensation at the applicable minimum wage and
20 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
21 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
22 records.

23 9. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
25 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
26 CALIFORNIA CLASS Members were from time to time required to perform work as ordered
27 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
28 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS

1 Members with a second off-duty meal period from time to time in which these employees were
2 required by DEFENDANT to work ten (10) hours of work from time to time. DEFENDANT
3 also engaged in the practice of rounding the meal period times to avoid paying penalties to
4 PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF and the other
5 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
6 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

1 period.

2 11. State law provides that employees must be paid overtime and meal and rest break
3 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
4 CALIFORNIA CLASS Members were compensated at an hourly rate plus incentive pay that
5 was tied to specific elements of an employee’s performance.

6 12. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
7 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
8 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
9 performance for DEFENDANT, including but not limited to shift differential wages for working
10 undesirable shifts, cash in lieu of benefits, and other non-discretionary incentive bonus wages.
11 The non-discretionary incentive program provided all employees paid on an hourly basis with
12 incentive compensation when the employees met the various performance goals set by
13 DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime and
14 meal and rest break premium pay to PLAINTIFF and other CALIFORNIA CLASS Members,
15 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular
16 rate of pay” for purposes of calculating overtime and meal and rest break premium pay.
17 Management and supervisors described the incentive program to potential and new employees
18 as part of the compensation package. As a matter of law, the incentive compensation received
19 by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the “regular
20 rate of pay.” The failure to do so has resulted in an underpayment of overtime compensation
21 and meal and rest break premium pay to PLAINTIFF and other CALIFORNIA CLASS
22 Members by DEFENDANT.

23 13. DEFENDANT also failed to provide PLAINTIFF and the other members of the
24 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
25 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
26 every employer shall furnish each of his or her employees with an accurate itemized wage
27 statement in writing showing, among other things, gross wages earned and all applicable hourly
28 rates in effect during the pay period and the corresponding amount of time worked at each

1 hourly rate. Specifically, PLAINTIFF and CALIFORNIA CLASS Members were paid on an
2 hourly basis. As such, the wage statements should reflect all applicable hourly rates during the
3 pay period and the total hours worked, and the applicable pay period in which the wages were
4 earned pursuant to California Labor Code Section 226(a). The wage statements Defendant
5 provided to PLAINTIFF and CALIFORNIA CLASS Members failed to identify such
6 information. More specifically, the wage statements failed to identify the accurate total hours
7 worked each pay period. When the hours shown on the wage statements were added up, they
8 did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code
9 Section 226(a)(2). Defendant also violated Cal. Lab. Code Section 226(a)(8) by failing to list
10 the correct legal entity that employed PLAINTIFF and other CALIFORNIA CLASS Members.
11 Also, DEFENDANT failed to list the hourly rate and total hours worked for the “other” wage
12 payments in violation of Cal. Lab. Code 226(a)(9). Aside, from the violations listed above,
13 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
14 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
15 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
16 statements which violated Cal. Lab. Code § 226.

17 14. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
18 employment are due and payable twice during each calendar month, on days designated in
19 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
20 requires employers to pay employees all wages owed within seven (7) days of the close of the
21 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
22 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
23 the payroll period, including but not limited to the “Other” wage payments.

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

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

6 16. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
7 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
8 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
9 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
10 underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base
11 rates of pay.

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

16 18. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
17 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
18 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
19 was paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA
20 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
21 Section 246.

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

28 20. In violation of the applicable sections of the California Labor Code and the

1 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
2 a matter of company policy, practice and procedure, intentionally and knowingly failed to
3 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal
4 and rest periods. This policy and practice of DEFENDANT is intended to purposefully avoid
5 the payment for all time worked as required by California law which allows DEFENDANT to
6 illegally profit and gain an unfair advantage over competitors who complied with the law. To
7 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
8 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

20 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
21 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
22 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
23 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
24 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
25 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
26 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for
27 the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
28 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business

1 records. DEFENDANT also required PLAINTIFF to work off the clock without paying
2 PLAINTIFF for all the time PLAINTIFF was working for DEFENDANT, specifically by failing
3 to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected
4 PLAINTIFF to complete on a daily and/or weekly basis. The amount in controversy for
5 PLAINTIFF individually does not exceed the sum or value of \$75,000. To date, DEFENDANT
6 has not fully paid PLAINTIFF for all PLAINTIFF's wages still owed to PLAINTIFF or any
7 penalties owed to PLAINTIFF under California Labor Code § 203.

8 23. In or around March of 2021, and continuing throughout the rest of PLAINTIFF's
9 employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT,
10 including but not limited to DEFENDANT's manager David Lindsay, of DEFENDANT's
11 illegal employment practices, including, but not limited to, DEFENDANT's failure to properly
12 follow safety protocols regarding Covid-19.

13 24. Subsequent to PLAINTIFF's participation in protective activity by complaining
14 to DEFENDANT of DEFENDANT's unlawful employment practices in or around March of
15 2021, and continuing throughout the rest of PLAINTIFF's employment, DEFENDANT
16 subjected PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF.
17 Specifically, after PLAINTIFF complained to his supervisor(s) of DEFENDANT's unlawful
18 employment practices, DEFENDANT terminated PLAINTIFF's employment with
19 DEFENDANT on May 3, 2021. As a result, there is a causal link between the protected activity
20 and DEFENDANT's decision to terminate his employment, which is against public policy.
21

22 **JURISDICTION AND VENUE**

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

27 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28

1 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
2 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
3 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
4 committed the wrongful conduct herein alleged in this County against members of the
5 CALIFORNIA CLASS.

6 **THE CALIFORNIA CLASS**

7 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
8 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
9 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
10 all individuals who are or previously worked for DEFENDANT, Day Management Corporation
11 (DBA) Day Wireless Systems, in California who were classified as non-exempt employees (the
12 "CALIFORNIA CLASS") and who worked during the period beginning on January 14, 2018
13 to the earlier of the date of an order approving Plaintiff's motion for preliminary approval, or
14 June 1, 2023 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
15 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
16 (\$5,000,000.00).

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

20 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
22 requirements, and the applicable provisions of California law, intentionally, knowingly, and
23 wilfully, engages in a practice whereby DEFENDANT fails to record all meal and rest breaks
24 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT
25 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
26 to permit this work.

27 30. DEFENDANT has the legal burden to establish that each and every
28 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as

1 required by California laws. The DEFENDANT, however, as a matter of policy and procedure
2 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in
3 place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid
4 as required by law. This common business practice is applicable to each and every
5 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
6 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as
7 causation, damages, and reliance are not elements of this claim.

8 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

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

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

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

- 23 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
24 that the joinder of all such persons is impracticable and the disposition of
25 their claims as a class will benefit the parties and the Court;
26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
27 that are raised in this Complaint are common to the CALIFORNIA
28 CLASS will apply to every member of the CALIFORNIA CLASS;

1 (c) The claims of the representative PLAINTIFF are typical of the claims of
2 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
3 other members of the CALIFORNIA CLASS, is classified as a non-
4 exempt employee paid on an hourly basis who has been subjected to the
5 DEFENDANT's deceptive practice and policy which failed to provide the
6 legally required meal and rest periods to the CALIFORNIA CLASS and
7 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
8 CLASS. PLAINTIFF sustained economic injury as a result of
9 DEFENDANT's employment practices. PLAINTIFF and the members of
10 the CALIFORNIA CLASS were and are similarly or identically harmed
11 by the same unlawful, deceptive and unfair misconduct engaged in by
12 DEFENDANT; and,

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

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

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

27 1) Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA CLASS which would establish

1 incompatible standards of conduct for the parties opposing the
2 CALIFORNIA CLASS; and/or,

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

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

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

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

27 1) The interests of the members of the CALIFORNIA CLASS in
28 individually controlling the prosecution or defense of separate

1 actions in that the substantial expense of individual actions will be
2 avoided to recover the relatively small amount of economic losses
3 sustained by the individual CALIFORNIA CLASS Members when
4 compared to the substantial expense and burden of individual
5 prosecution of this litigation;

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

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

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

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

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

28 35. This Court should permit this action to be maintained as a Class Action pursuant

1 to Cal. Code of Civ. Proc. § 382 because:

- 2 (a) The questions of law and fact common to the CALIFORNIA CLASS
3 predominate over any question affecting only individual CALIFORNIA
4 CLASS Members because the DEFENDANT's employment practices are
5 applied with respect to the CALIFORNIA CLASS;
- 6 (b) A Class Action is superior to any other available method for the fair and
7 efficient adjudication of the claims of the members of the CALIFORNIA
8 CLASS because in the context of employment litigation a substantial
9 number of individual CALIFORNIA CLASS Members will avoid
10 asserting their rights individually out of fear of retaliation or adverse
11 impact on their employment;
- 12 (c) The members of the CALIFORNIA CLASS are so numerous that it is
13 impractical to bring all members of the CALIFORNIA CLASS before the
14 Court;
- 15 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
16 able to obtain effective and economic legal redress unless the action is
17 maintained as a Class Action;
- 18 (e) There is a community of interest in obtaining appropriate legal and
19 equitable relief for the acts of unfair competition, statutory violations and
20 other improprieties, and in obtaining adequate compensation for the
21 damages and injuries which DEFENDANT's actions have inflicted upon
22 the CALIFORNIA CLASS;
- 23 (f) There is a community of interest in ensuring that the combined assets of
24 DEFENDANT are sufficient to adequately compensate the members of
25 the CALIFORNIA CLASS for the injuries sustained;
- 26 (g) DEFENDANT has acted or refused to act on grounds generally applicable
27 to the CALIFORNIA CLASS, thereby making final class-wide relief
28 appropriate with respect to the CALIFORNIA CLASS as a whole;

- 1 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
2 the business records of DEFENDANT; and,
- 3 (i) Class treatment provides manageable judicial treatment calculated to bring
4 a efficient and rapid conclusion to all litigation of all wage and hour
5 related claims arising out of the conduct of DEFENDANT as to the
6 members of the CALIFORNIA CLASS.

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

12
13 **THE CALIFORNIA LABOR SUB-CLASS**

14 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
15 Causes of Action on behalf of a California sub-class, defined as all members of the
16 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
17 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
18 to the filing of the complaint and ending on the date as determined by the Court (the
19 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
20 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
21 Members is under five million dollars (\$5,000,000.00).

22 38. DEFENDANT, as a matter of company policy, practice and procedure, and in
23 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
24 requirements, and the applicable provisions of California law, intentionally, knowingly, and
25 wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation
26 for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR
27 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT
28 enjoys the benefit of this work, requires employees to perform this work and permits or suffers

1 to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS
2 Members wages to which these employees are entitled in order to unfairly cheat the competition
3 and unlawfully profit. To the extent equitable tolling operates to toll claims by the
4 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
5 SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 15 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
16 compensation due to members of the CALIFORNIA LABOR SUB-
17 CLASS for missed meal and rest breaks in violation of the California
18 Labor Code and California regulations and the applicable California Wage
19 Order;
- 20 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS with accurate
22 itemized wage statements;
- 23 (c) Whether DEFENDANT has engaged in unfair competition by the
24 above-listed conduct;
- 25 (d) The proper measure of damages and penalties owed to the members of the
26 CALIFORNIA LABOR SUB-CLASS; and,
- 27 (e) Whether DEFENDANT's conduct was willful.

28 42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS

1 under California law by:

- 2 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
3 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
4 CLASS all wages due for overtime worked, for which DEFENDANT is
5 liable pursuant to Cal. Lab. Code § 1194;
- 6 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
7 accurately pay PLAINTIFF and the members of the CALIFORNIA
8 LABOR SUB-CLASS the correct minimum wage pay for which
9 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 10 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
11 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
12 itemized statement in writing showing the corresponding correct amount
13 of wages earned by the employee; and,
- 14 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
16 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
17 meal breaks and the legally required off-duty rest breaks.

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

- 20 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
21 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
22 Members is impracticable and the disposition of their claims as a class
23 will benefit the parties and the Court;
- 24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
25 that are raised in this Complaint are common to the CALIFORNIA
26 LABOR SUB-CLASS and will apply to every member of the
27 CALIFORNIA LABOR SUB-CLASS;
- 28 (c) The claims of the representative PLAINTIFF are typical of the claims of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) A Class Action is superior to any other available method for the fair and
28 efficient adjudication of the claims of the members of the CALIFORNIA

1 LABOR SUB-CLASS because in the context of employment litigation a
2 substantial number of individual CALIFORNIA LABOR SUB-CLASS
3 Members will avoid asserting their rights individually out of fear of
4 retaliation or adverse impact on their employment;

5 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
6 numerous that it is impractical to bring all members of the CALIFORNIA
7 LABOR SUB-CLASS before the Court;

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

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

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

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

23 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
24 ascertainable from the business records of DEFENDANT. The
25 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
26 CLASS Members who worked for DEFENDANT in California at any
27 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

28 (i) Class treatment provides manageable judicial treatment calculated to bring

1 a efficient and rapid conclusion to all litigation of all wage and hour
2 related claims arising out of the conduct of DEFENDANT as to the
3 members of the CALIFORNIA LABOR SUB-CLASS.

4
5 **FIRST CAUSE OF ACTION**

6 **For Unlawful Business Practices**

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

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

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

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

14 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
15 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
16 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
17 competition as follows:

18 Any person who engages, has engaged, or proposes to engage in unfair
19 competition may be enjoined in any court of competent jurisdiction. The court
20 may make such orders or judgments, including the appointment of a receiver, as
21 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.

22 Cal. Bus. & Prof. Code § 17203.

23 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Industrial Wage Order(s), the California Code of Regulations and the California
26 Labor Code including Sections 204, 210, 226.7, 246, 248.5, 510, 512, 1194, 1197, 1197.1, 1198
27 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for which
28 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code

1 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
2 competition, including restitution of wages wrongfully withheld.

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

8 51. By the conduct alleged herein, DEFENDANT's practices are deceptive and
9 fraudulent in that DEFENDANT's policy and practice fails to provide the legally mandated
10 meal and rest periods, and the required amount of compensation for missed meal and rest
11 periods, reporting time pay, and overtime and minimum wages owed, and Fair Labor Standards
12 Act overtime wages due for overtime worked as a result of failing to include non-discretionary
13 incentive compensation into their regular rate for purposes of computing the proper overtime
14 pay, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
15 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
16 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
17 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

1 for each workday in which a second off-duty meal period was not timely provided for each ten
2 (10) hours of work.

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

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

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

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

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

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

1 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

26 66. DEFENDANT maintains a wage practice of paying PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
28 time they work. As set forth herein, DEFENDANT's policy and practice is to unlawfully and

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

26 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
27 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28 CLASS for the true time they work, PLAINTIFF and the other members of the CALIFORNIA

LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code § 510]

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

Defendants)

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

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

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

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

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

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

81. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that failed to accurately record overtime work by

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
2 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS for overtime work, including, the overtime work performed in excess of eight (8) hours
4 in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

15 83. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
16 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not
17 receiving full compensation for overtime worked.

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

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

1 86. DEFENDANT fails to accurately pay the PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
3 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
4 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS are required to work, and did in fact work, overtime as to which DEFENDANT fails
6 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed
7 by employees.

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

14 88. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for all overtime
16 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
17 to not pay employees for their labor as a matter of company policy, practice and procedure, and
18 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
19 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

28 90. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
2 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
3 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
4 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

6
7 **FOURTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

15 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
16 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
17 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
18 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
19 does not prevent these employees from being relieved of all of their duties for the legally
20 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and
21 other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved
22 of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to
23 provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally
24 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
25 business records. Further, DEFENDANT fails to provide PLAINTIFF and CALIFORNIA
26 CLASS Members with a second off-duty meal period in some workdays in which these
27 employees were required by DEFENDANT to work ten (10) hours of work. As a result,
28 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeit

1 meal breaks without additional compensation and in accordance with DEFENDANT's strict
2 corporate policy and practice.

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

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

12
13 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied
2 their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

12 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

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

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

20 100. Cal. Labor Code § 226 provides that an employer must furnish employees 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 compensation
24 is solely based on a salary and who is exempt from payment of overtime under
25 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
26 Commission,

27 (3) the number of piecerate units earned and any applicable piece rate if the employee
28

1 is paid on a piece-rate basis,
2 (4) all deductions, provided that all deductions made on written orders of the employee
3 may be aggregated and shown as one item,
4 (5) net wages earned,
5 (6) the inclusive dates of the period for which the employee is paid,
6 (7) the name of the employee and his or her social security number, except that by
7 January 1, 2008, only the last four digits of his or her social security number or an
8 employee identification number other than a social security number may be shown on
9 the itemized statement,
10 (8) the name and address of the legal entity that is the employer, and
11 (9) all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each hourly rate by the employee.

13 101. DEFENDANT also failed to provide PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which
15 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
16 226 provides that every employer shall furnish each of his or her employees with an accurate
17 itemized wage statement in writing showing, among other things, gross wages earned and all
18 applicable hourly rates in effect during the pay period and the corresponding amount of time
19 worked at each hourly rate. Specifically, PLAINTIFF and CALIFORNIA LABOR SUB-
20 CLASS Members were paid on an hourly basis. As such, the wage statements should reflect
21 all applicable hourly rates during the pay period and the total hours worked, and the applicable
22 pay period in which the wages were earned pursuant to California Labor Code Section 226(a).
23 The wage statements Defendant provided to PLAINTIFF and CALIFORNIA LABOR SUB-
24 CLASS Members failed to identify such information. More specifically, the wage statements
25 failed to identify the accurate total hours worked each pay period. When the hours shown on
26 the wage statements were added up, they did not equal the actual total hours worked during the
27 pay period in violation of Cal. Lab. Code Section 226(a)(2). Defendant also violated Cal. Lab.
28 Code Section 226(a)(8) by failing to list the correct legal entity that employed PLAINTIFF and

1 other CALIFORNIA LABOR SUB-CLASS Members. Also, DEFENDANT failed to list the
2 hourly rate and total hours worked for the “other” wage payments in violation of Cal. Lab. Code
3 226(a)(9). Aside, from the violations listed above, DEFENDANT failed to issue to
4 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
5 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
7 violated Cal. Lab. Code § 226.

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

19
20 **SEVENTH CAUSE OF ACTION**

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

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

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

24 **and Against All Defendants)**

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

28 104. Cal. Lab. Code § 200 provides, in relevant part, that:

As used in this article:

(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.

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

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

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

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

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

If an employer willfully fails to pay, without abatement or reduction, in 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 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.

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

110. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all employees who

1 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
2 demands an accounting and payment of all wages due, plus interest and statutory costs as
3 allowed by law.

4
5 **EIGHTH CAUSE OF ACTION**

6 **Wrongful Termination In Violation of Public Policy**

7 **(By PLAINTIFF Against All Defendants)**

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

10 112. In or around March of 2021, and continuing throughout the rest of
11 PLAINTIFF's employment, PLAINTIFF engaged in protected activity by complaining to
12 DEFENDANT, including but not limited to DEFENDANT's manager David Lindsay, of
13 DEFENDANT's illegal employment practices, including, but not limited to,
14 DEFENDANT's failure to properly follow safety protocols regarding Covid-19.

15 113. Subsequent to PLAINTIFF's participation in protective activity by
16 complaining to DEFENDANT of DEFENDANT's unlawful employment practices in or
17 around March of 2021, and continuing throughout the rest of PLAINTIFF's employment,
18 DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against
19 PLAINTIFF. Specifically, after PLAINTIFF complained to his supervisor(s) of
20 DEFENDANT's unlawful employment practices, DEFENDANT terminated PLAINTIFF's
21 employment with DEFENDANT on May 3, 2021. As a result, there is a causal link between
22 the protected activity and DEFENDANT's decision to terminate his employment, which is
23 against public policy.

24 114. PLAINTIFF raised complaints of illegality while he worked for
25 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
26 retaliated against him by taking adverse employment actions, including employment
27 termination, against him.

28 115. As a proximate result of DEFENDANT'S willful, knowing, and intentional,

1 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental
2 and physical pain and anguish, all to her damage in a sum according to proof.

3 116. As a result of DEFENDANT'S adverse employment actions against
4 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
5 proof.

6 117. DEFENDANT'S misconduct was committed intentionally, in a malicious,
7 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
8 against DEFENDANT.

9 **NINTH CAUSE OF ACTION**

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

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

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

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

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

25 120. PLAINTIFF, and such persons that may be added from time to time who satisfy
26 the requirements and exhaust the administrative procedures under the Private Attorney General
27 Act, brings this Representative Action on behalf of the State of California with respect to
28 himself and all individuals who are or previously were employed by DEFENDANT in

1 California and who were classified as non exempt employees (“AGGRIEVED EMPLOYEES”)
2 during the time period of February 24, 2021, to the earlier of the date of an order approving
3 Plaintiff’s motion for preliminary approval, or June 1, 2023 (the "PAGA PERIOD").

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

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

23 123. All of the conduct and violations alleged herein occurred during the PAGA
24 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
25 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
26

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

1 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30
2 Cal.App.5th 504 (208)

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
20 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
21 pursuant to Cal. Code of Civ. Proc. § 382;
22 B) Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum and overtime compensation due PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
25 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
26 statutory rate;
27 C) Meal and rest period compensation pursuant to California Labor Code Section
28 226.7 and the applicable IWC Wage Order;

- 1 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 2 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 3 in which a violation occurs and one hundred dollars (\$100) per each member of
- 4 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 5 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 6 an award of costs for violation of Cal. Lab. Code § 226;
- 7 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 8 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
- 9 costs of suit; and,
- 10 G) The wages of all terminated employees in the CALIFORNIA LABOR
- 11 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
- 12 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 13 3. On behalf of PLAINTIFF for the Eighth cause of action:
- 14 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.
- 15 B) Special and General damages according to proof;
- 16 C) Statutory damages, penalties and attorney's fees;
- 17 D) For punitive damages in an amount necessary to make an example of and to
- 18 punish DEFENDANT and deter DEFENDANT from engaging in future similar
- 19 conduct;
- 20 E) For loss of earnings (both past and future); and,
- 21 F) For interest at the legal rate in an amount according to proof.
- 22 4. On behalf of the State of California and with respect to all AGGRIEVED
- 23 EMPLOYEES:
- 24 A) Recovery of civil penalties as prescribed by the Labor Code Private
- 25 Attorneys General Act of 2004; and,
- 26 B) An award of attorneys' fees and cost of suit, as allowable under the
- 27 law, including, but not limited to, pursuant to Labor Code §2699.
- 28 5. On all claims:

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

Dated: April 24, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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DEMAND FOR A JURY TRIAL

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

April 24, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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