

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOW 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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

JOSEPH DAGUIL, an individual,
on behalf of himself and on behalf
of all persons similarly situated,

Plaintiff,

vs.

ROCHE SEQUENCING
SOLUTIONS, INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. **22CV393408**

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

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT offers diagnostics solutions in the healthcare industry.

10 3. PLAINTIFF has been employed by DEFENDANT in California since 2013 and
11 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
12 basis, and entitled to the legally required meal and rest periods and payment of minimum and
13 overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
17 time period of January 18, 2018 to February 1, 2023 (the “CALIFORNIA CLASS PERIOD”).
18 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under
19 five million dollars (\$5,000,000.00).

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

1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

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

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

20 21 THE CONDUCT

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

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

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

24 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
25 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANT. The non-discretionary incentive program provided all
28 employees paid on an hourly basis with incentive compensation when the employees met the

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

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

23 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
24 CALIFORNIA CLASS Members are also required from time to time to work in excess of four
25 (4) hours without being provided ten (10) minute rest periods. Further, these employees are
26 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
27 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
28 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,

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

19 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately
20 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
21 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
22 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
23 all time worked, meaning the time during which an employee was subject to the control of an
24 employer, including all the time the employee was permitted or suffered to permit this work.
25 DEFENDANT requires these employees to work off the clock without paying them for all the
26 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
27 known that PLAINTIFF and the other members of the CALIFORNIA CLASS are under
28 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS

1 Members forfeit time worked by working without their time being accurately recorded and
2 without compensation at the applicable minimum wage and overtime wage rates. To the extent
3 that the time worked off the clock does not qualify for overtime premium payment,
4 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
5 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

27 16. DEFENDANT from time to time fails to pay PLAINTIFF and members of the
28 CALIFORNIA CLASS Members within seven (7) days of the close of the payroll period in

1 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro Pay Flat”
2 wage payment.

3 17. DEFENDANT underpays sick pay wages to PLAINTIFF and other
4 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
5 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
6 employees earn non-discretionary remuneration, including but not limited to, incentives, shift
7 differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
8 DEFENDANT underpays sick pay to PLAINTIFF and other CALIFORNIA CLASS Members
9 at their base rates of pay.

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

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

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

26 21. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
27 to collect or receive from an employee any part of wages theretofore paid by said employer to
28 said employee.” DEFENDANT fails to pay all compensation due to PLAINTIFF and other

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

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

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

27 24. Specifically as to PLAINTIFF, DEFENDANT fails to provide all the legally
28 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order

1 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
2 PLAINTIFF. DEFENDANT does not have a policy or practice which provided timely off-duty
3 meal and rest breaks to PLAINTIFF and also fails to compensate PLAINTIFF for PLAINTIFF's
4 missed meal and rest breaks. The nature of the work performed by the PLAINTIFF does not
5 prevent PLAINTIFF from being relieved of all of his duties for the legally required off-duty
6 meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally
7 required meal periods is evidenced by DEFENDANT's business records. Furthermore,
8 specifically as to PLAINTIFF, DEFENDANT failed to properly maintain standard safety
9 measures at his job site during the COVID-19 pandemic. As such, PLAINTIFF was placed in
10 a constant risk of harm while performing his job duties for DEFENDANT.

11 **JURISDICTION AND VENUE**

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

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

21 **THE CALIFORNIA CLASS**

22 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
25 all individuals who are or previously were employed by DEFENDANT in California and
26 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the time
27
28

1 period of January 18, 2018 to February 1, 2023 (the "CALIFORNIA CLASS PERIOD"). The
2 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
3 million dollars (\$5,000,000.00).

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

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

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

23 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

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

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

1 deceptively having in place company policies, practices and procedures
2 that failed to record and pay PLAINTIFF and the other members of the
3 CALIFORNIA CLASS for all time worked, including minimum wages
4 owed and overtime wages owed for work performed by these employees;
5 and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Adjudications with respect to individual members of the

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

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

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

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

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

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

(c) The members of the CALIFORNIA CLASS are so numerous that it is

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

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

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

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

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

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

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

23 36. DEFENDANT maintains records from which the Court can ascertain and identify
24 by job title each of DEFENDANT's employees who have been intentionally subjected to
25 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will
26 seek leave to amend the Complaint to include any additional job titles of similarly situated
27 employees when they have been identified.
28

1 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
2 causes Action on behalf of the CALIFORNIA CLASS during the CALIFORNIA CLASS
3 PERIOD pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
4 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
5 (\$5,000,000.00).

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

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

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

24 41. Common questions of law and fact exist as to members of the CALIFORNIA
25 CLASS, including, but not limited, to the following:

- 26 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA CLASS for missed
28 meal and rest breaks in violation of the California Labor Code and

California regulations and the applicable California Wage Order;

- (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the CALIFORNIA CLASS; and,
- (e) Whether DEFENDANT's conduct was willful.

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

- (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that

1 when an employee is discharged or quits from employment, the employer
2 must pay the employee all wages due without abatement, by failing to
3 tender full payment and/or restitution of wages owed or in the manner
4 required by California law to the members of the CALIFORNIA CLASS
5 who have terminated their employment; and,

- 6 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
7 the CALIFORNIA CLASS members with necessary expenses incurred in
8 the discharge of their job duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA CLASS Members will avoid asserting
27 their legal rights out of fear of retaliation by DEFENDANT, which
28 may adversely affect an individual's job with DEFENDANT or

1 with a subsequent employer, the Class Action is the only means to
2 assert their claims through a representative; and,

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

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

- 10 (a) The questions of law and fact common to the CALIFORNIA CLASS
11 predominate over any question affecting only individual CALIFORNIA
12 CLASS Members;
- 13 (b) A Class Action is superior to any other available method for the fair and
14 efficient adjudication of the claims of the members of the CALIFORNIA
15 CLASS because in the context of employment litigation a substantial
16 number of individual CALIFORNIA CLASS Members will avoid
17 asserting their rights individually out of fear of retaliation or adverse
18 impact on their employment;
- 19 (c) The members of the CALIFORNIA CLASS are so numerous that it is
20 impractical to bring all members of the CALIFORNIA CLASS before the
21 Court;
- 22 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
23 able to obtain effective and economic legal redress unless the action is
24 maintained as a Class Action;
- 25 (e) There is a community of interest in obtaining appropriate legal and
26 equitable relief for the acts of unfair competition, statutory violations and
27 other improprieties, and in obtaining adequate compensation for the
28 damages and injuries which DEFENDANT's actions have inflicted upon

1 the CALIFORNIA CLASS;

- 2 (f) There is a community of interest in ensuring that the combined assets of
3 DEFENDANT are sufficient to adequately compensate the members of
4 the CALIFORNIA CLASS for the injuries sustained;
- 5 (g) DEFENDANT has acted or refused to act on grounds generally applicable
6 to the CALIFORNIA CLASS, thereby making final class-wide relief
7 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 8 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
9 the business records of DEFENDANT. The CALIFORNIA CLASS
10 consists of all CALIFORNIA CLASS Members who worked for
11 DEFENDANT in California at any time during the CALIFORNIA
12 CLASS PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to bring
14 a efficient and rapid conclusion to all litigation of all wage and hour
15 related claims arising out of the conduct of DEFENDANT as to the
16 members of the CALIFORNIA CLASS.

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

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

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

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

27 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair
4 competition may be enjoined in any court of competent jurisdiction. The court
5 may make such orders or judgments, including the appointment of a receiver, as
6 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.

7 Cal. Bus. & Prof. Code § 17203.

8 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
9 engage in a business practice which violates California law, including but not limited to, the
10 applicable Industrial Wage Order(s), the California Code of Regulations and the California
11 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,
12 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
13 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
14 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
15 unfair competition, including restitution of wages wrongfully withheld.

16 50. By the conduct alleged herein, DEFENDANT's practices were unlawful and
17 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
18 unscrupulous or substantially injurious to employees, and were without valid justification or
19 utility for which this Court should issue equitable and injunctive relief pursuant to Section
20 17203 of the California Business & Professions Code, including restitution of wages wrongfully
21 withheld.

22 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
24 meal and rest periods, the required amount of compensation for missed meal and rest periods
25 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
26 all necessary business expenses incurred, and failed to provide Fair Labor Standards Act
27 overtime wages due for overtime worked as a result of failing to include non-discretionary
28 incentive compensation into their regular rates of pay for purposes of computing the proper

1 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.
2 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
3 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
4 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

27 57. All the acts described herein as violations of, among other things, the Industrial
28 Welfare Commission Wage Orders, the California Code of Regulations, and the California

1 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
2 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
3 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

20
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

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

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

1 62. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
2 for DEFENDANT's willful and intentional violations of the California Labor Code and the
3 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
4 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

12 66. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
13 members of the CALIFORNIA CLASS without regard to the correct amount of time they work.
14 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally
15 deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA
16 CLASS.

17 67. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
18 applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a policy and
19 practice that denies accurate compensation to PLAINTIFF and the other members of the
20 CALIFORNIA CLASS in regards to minimum wage pay.

21 68. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately calculated the correct time worked and consequently underpaid the actual time
23 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT
24 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
25 violation of the California Labor Code, the Industrial Welfare Commission requirements and
26 other applicable laws and regulations.

27 69. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct

1 minimum wage compensation for their time worked for DEFENDANT.

2 70. During the CALIFORNIA CLASS PERIOD, DEFENDANT required, permitted
3 or suffered PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for
4 all the time they were under DEFENDANT's control. During the CALIFORNIA CLASS
5 PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for
6 time worked that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

26 74. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
27 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
28 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the

1 California Labor Code and/or other applicable statutes. To the extent minimum wage
2 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
3 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
4 202, and therefore these individuals are also be entitled to waiting time penalties under Cal.
5 Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
6 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
7 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
8 recover statutory costs.

9
10 **THIRD CAUSE OF ACTION**

11 **For Failure To Pay Overtime Compensation**

12 **[Cal. Lab. Code § 510]**

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

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

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

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

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

28 79. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,

1 including minimum wage and overtime compensation and interest thereon, together with the
2 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
3 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

4 80. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and CALIFORNIA
5 CLASS Members were required, permitted or suffered by DEFENDANT to work for
6 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

14 82. In committing these violations of the California Labor Code, DEFENDANT
15 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
16 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
17 attempt to avoid the payment of all earned wages, and other benefits in violation of the
18 California Labor Code, the Industrial Welfare Commission requirements and other applicable
19 laws and regulations.

20 83. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
21 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
22 compensation for overtime worked.

23 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
24 from the overtime requirements of the law. None of these exemptions are applicable to the
25 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and
26 the other members of the CALIFORNIA CLASS were not subject to a valid collective
27 bargaining agreement that would preclude the causes of action contained herein this Complaint.
28 Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS

1 based on DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the
2 State of California.

3 85. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and the other members
4 of the CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
5 constituting a failure to pay all earned wages..

6 86. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
7 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess
8 of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198,
9 even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required
10 to work, and did in fact work, overtime as to which DEFENDANT failed to accurately record
11 and pay as evidenced by DEFENDANT's business records and witnessed by employees.

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

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

23 89. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
25 worked and provide them with the requisite overtime compensation, DEFENDANT acted and
26 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
27 members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal
28 rights, or the consequences to them, and with the despicable intent of depriving them of their

1 property and legal rights, and otherwise causing them injury in order to increase company
2 profits at the expense of these employees.

3 90. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
4 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as
5 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
6 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime
7 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
8 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
9 202, and therefore these individuals are also be entitled to waiting time penalties under Cal.
10 Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
11 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
12 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
13 recover statutory costs.

14 **FOURTH CAUSE OF ACTION**

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

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

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

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

21 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
22 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
23 CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code.
24 The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS MEMBERS did
25 not prevent these employees from being relieved of all of their duties for the legally required
26 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA CLASS Members were from time to time not fully relieved of duty by
28

1 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior
3 to their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time
4 to time. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
5 Members with a second off-duty meal period in some workdays in which these employees were
6 required by DEFENDANT to work ten (10) hours of work from time to time. As a result,
7 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
8 without additional compensation and in accordance with DEFENDANT's strict corporate policy
9 and practice.

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

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

18 19 **FIFTH CAUSE OF ACTION**

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

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

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

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

26 96. PLAINTIFF and other CALIFORNIA CLASS Members were from time to time
27 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
28 Further, these employees from time to time were denied their first rest periods of at least ten

(10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

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

101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8) by failing to list the correct legal entity that employs PLAINTIFF and other CALIFORNIA CLASS Members Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

102. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for

1 each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount
2 according to proof at the time of trial (but in no event more than four thousand dollars
3 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS
4 herein).

5
6 **SEVENTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 2802]**

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

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

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

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

19 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
20 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
21 members for required expenses incurred in the discharge of their job duties for
22 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
23 CALIFORNIA CLASS members for expenses which included, but were not limited to, costs
24 related to using their personal cellular phones on behalf of and for the benefit of
25 DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
26 required by DEFENDANT to use their personal cellular phones in order to perform work
27 related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFF
28 and the CALIFORNIA CLASS members for expenses resulting from using their personal
cellular phones for DEFENDANT within the course and scope of their employment for

1 DEFENDANT. These expenses were necessary to complete their principal job duties.
2 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
3 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
4 and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse
5 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is
6 required to do under the laws and regulations of California.

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

11 **EIGHTH CAUSE OF ACTION**

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

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

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

15 107. PLAINTIFF incorporates by reference the allegations set forth in the foregoing
16 paragraphs, as though fully set forth at this point.

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

26 109. PLAINTIFF, and such persons that may be added from time to time who satisfy the
27 requirements and exhaust the administrative procedures under the Private Attorney General Act,
28

1 brings this Representative Action on behalf of the State of California with respect to himself and all
2 individuals who are or previously were employed by DEFENDANT in California and who were
3 classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the time period of
4 October 22, 2020 to February 1, 2023 (the "PAGA PERIOD").

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

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

24 112. All of the conduct and violations alleged herein occurred during the PAGA
25 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
26 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
27 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*, 30 Cal.
28 App. 5th 504 (2018).

1
2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
4 severally, as follows:

5 1. On behalf of the CALIFORNIA CLASS:

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

16 2. On behalf of the CALIFORNIA CLASS:

- 17 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh Causes of
18 Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal.
19 Code of Civ. Proc. § 382;
20 B) Compensatory damages, according to proof at trial, including compensatory
21 damages for minimum and overtime compensation due PLAINTIFF and the other
22 members of the CALIFORNIA CLASS, during the applicable CALIFORNIA
23 CLASS PERIOD plus interest thereon at the statutory rate;
24 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
25 in which a violation occurs and one hundred dollars (\$100) per each member of
26 the CALIFORNIA CLASS for each violation in a subsequent pay period, not
27 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award
28 of costs for violation of Cal. Lab. Code § 226;

- 1 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
4 1197; and,
- 5 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
6 CLASS incurred in the course of their job duties, plus interest, and costs of suit.
- 7 4. On behalf of the State of California and with respect to all AGGRIEVED
8 EMPLOYEES:
- 9 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
10 General Act of 2004.
- 11 5. On all claims:
- 12 A) An award of interest, including prejudgment interest at the legal rate;
- 13 B) Such other and further relief as the Court deems just and equitable; and,
- 14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
15 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
16 and/or §2802.

17
18 Dated: March 10, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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20 By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: March 10, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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