

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

5 Nicholas J. De Blouw (State Bar #280922)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiffs

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

14 HAMZA KISSAM and ASIA CRAWFORD,
15 individuals, on behalf of themselves and on
16 behalf of all persons similarly situated,

17 Plaintiffs,

18 vs.

19 HAWTHORNE HYDROPONICS LLC, a
20 Limited Liability Company; and DOES 1
21 through 50, inclusive,

22 Defendants.

Case No. CIVSB2203720

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant Hawthorne Hydroponics LLC (“DEFENDANT”) is a limited liability
8 company that at all relevant times mentioned herein conducted and continues to conduct
9 substantial business in the state of California.

10 2. DEFENDANT is a vertically integrated manufacturer, direct seller and service
11 provider dedicated to servicing licensed producers and the hydroponics retail industry.

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

16 4. Plaintiff Asia Crawford was employed by DEFENDANT in California from
17 September of 2018 to June of 2021 and was at all times classified by DEFENDANT as a non-
18 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
19 periods and payment of minimum and overtime wages due for all time worked.

20 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
21 class, defined as all individuals who are or previously were employed by DEFENDANT in
22 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
23 during the period beginning four (4) years prior to the filing of this Complaint and ending on
24 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
25 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
26 dollars (\$5,000,000.00).

27 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses

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

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

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

THE CONDUCT

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

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

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

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

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

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

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

23 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
24 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
25 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
26 DEFENDANT was required to pay PLAINTIFFS and other CALIFORNIA CLASS Members
27 for all time worked, meaning the time during which an employee was subject to the control of
28 an employer, including all the time the employee was permitted or suffered to permit this work.

1 DEFENDANT required these employees to work off the clock without paying them for all the
2 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
3 known that PLAINTIFFS and the other members of the CALIFORNIA CLASS were under
4 compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS
5 Members forfeited time worked by working without their time being accurately recorded and
6 without compensation at the applicable minimum wage and overtime wage rates. To the extent
7 that the time worked off the clock does not qualify for overtime premium payment,
8 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
9 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

1 16. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
2 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
3 wages are paid not more than seven (7) calendar days following the close of the payroll period.

4 Cal. Lab. Code § 210 provides:

5 [I]n addition to, and entirely independent and apart from, any other penalty provided in
6 this article, every person who fails to pay the wages of each employee as provided in
7 Sections. . . .204. . . shall be subject to a civil penalty as follows: (1) For any initial
8 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.

9 17. DEFENDANT from time to time failed to pay PLAINTIFFS and members of the
10 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
11 period in accordance with Cal. Lab. Code § 204(d).

12 18. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
13 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
14 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
15 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate of
16 pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS
17 Members at their base rates of pay.

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

22 20. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
23 the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned
24 non-discretionary incentive wages which increased their regular rate of pay. However, when
25 sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and members of the
26 CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay, as required under
27 Cal. Lab. Code Section 246.

28 21. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and

1 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting
2 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and
3 believe and based thereon allege that such failure to pay sick pay at regular rate was willful,
4 such that PLAINTIFFS and members of the CALIFORNIA CLASS whose employment has
5 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

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

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

26 24. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
27 Members as a business expense, were required by DEFENDANT to use their own personal
28 cellular phones as a result of and in furtherance of their job duties as employees for

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

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

19 **JURISDICTION AND VENUE**

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

24 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
25 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and
26 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
27 in this County and/or conducts substantial business in this County, and (ii) committed the
28

wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CALIFORNIA CLASS

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

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

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

31. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every

1 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
2 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as
3 causation, damages, and reliance are not elements of this claim.

4 32. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
5 CLASS Members is impracticable.

6 33. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
7 law by:

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

18 34. 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 CLASS are so numerous
21 that the joinder of all such persons is impracticable and the disposition of
22 their claims as a class will benefit the parties and the Court;
23 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
24 that are raised in this Complaint are common to the CALIFORNIA
25 CLASS will apply to every member of the CALIFORNIA CLASS;
26 (c) The claims of the representative PLAINTIFFS are typical of the claims of
27 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
28 other members of the CALIFORNIA CLASS, was classified as a non-

1 exempt employee paid on an hourly basis who was subjected to the
2 DEFENDANT's deceptive practice and policy which failed to provide the
3 legally required meal and rest periods to the CALIFORNIA CLASS and
4 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA
5 CLASS. PLAINTIFFS sustained economic injury as a result of
6 DEFENDANT's employment practices. PLAINTIFFS and the members
7 of the CALIFORNIA CLASS were and are similarly or identically harmed
8 by the same unlawful, deceptive and unfair misconduct engaged in by
9 DEFENDANT; and,

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

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

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

- 24 1) Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA CLASS which would establish
26 incompatible standards of conduct for the parties opposing the
27 CALIFORNIA CLASS; and/or,
28 2) Adjudication with respect to individual members of the

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

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members 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 PLAINTIFFS seek 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

1 compared to the substantial expense and burden of individual
2 prosecution of this litigation;

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

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

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

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

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

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

27 (a) The questions of law and fact common to the CALIFORNIA CLASS
28 predominate over any question affecting only individual CALIFORNIA

1 CLASS Members because the DEFENDANT's employment practices are
2 applied with respect to the CALIFORNIA CLASS;

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

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

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

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

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

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

26 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
27 the business records of DEFENDANT; 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 CLASS.

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

9
10 **THE CALIFORNIA LABOR SUB-CLASS**

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

19 39. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
20 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
21 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
22 to correctly calculate compensation for the time worked by PLAINTIFFS and the other
23 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these
24 employees, even though DEFENDANT enjoyed the benefit of this work, required employees
25 to perform this work and permitted or suffered to permit this work. DEFENDANT has denied
26 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
27 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
28 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against

1 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
2 accordingly.

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

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

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

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

25 43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
26 under California law by:

- 27 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
28 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-

1 CLASS all wages due for overtime worked, for which DEFENDANT is
2 liable pursuant to Cal. Lab. Code § 1194;

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

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

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

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

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

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

26 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
27 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
28 Members is impracticable and the disposition of their claims as a class

1 will benefit the parties and the Court;

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

6 (c) The claims of the representative PLAINTIFFS are typical of the claims of
7 each member of the CALIFORNIA LABOR SUB-CLASS.
8 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
9 SUB-CLASS, were non-exempt employees paid on an hourly basis who
10 were subjected to the DEFENDANT's practice and policy which failed to
11 pay the correct amount of wages due to the CALIFORNIA LABOR SUB-
12 CLASS. PLAINTIFFS sustained economic injury as a result of
13 DEFENDANT's employment practices. PLAINTIFFS and the members
14 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
15 identically harmed by the same unlawful, deceptive, and unfair
16 misconduct engaged in by DEFENDANT; and,

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

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

27 (a) Without class certification and determination of declaratory, injunctive,
28 statutory and other legal questions within the class format, prosecution of

1 separate actions by individual members of the CALIFORNIA LABOR
2 SUB-CLASS will create the risk of:

3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which
5 would establish incompatible standards of conduct for the parties
6 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

26 1) The interests of the members of the CALIFORNIA LABOR SUB-
27 CLASS in individually controlling the prosecution or defense of
28 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 LABOR SUB-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 LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

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

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

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

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members who worked for DEFENDANT in California at any
5 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
6 (i) Class treatment provides manageable judicial treatment calculated to bring
7 a efficient and rapid conclusion to all litigation of all wage and hour
8 related claims arising out of the conduct of DEFENDANT as to the
9 members of the CALIFORNIA LABOR SUB-CLASS.

10
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

14 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

18 48. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
19 Code § 17021.

20 49. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
21 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
22 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
23 competition as follows:

24 Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction. The court
26 may make such orders or judgments, including the appointment of a receiver, as
27 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.

28 Cal. Bus. & Prof. Code § 17203.

1 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Industrial Wage Order(s), the California Code of Regulations and the California
4 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,
5 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
6 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
7 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
8 unfair competition, including restitution of wages wrongfully withheld.

9 51. By the conduct alleged herein, DEFENDANT's practices were unlawful and
10 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
11 unscrupulous or substantially injurious to employees, and were without valid justification or
12 utility for which this Court should issue equitable and injunctive relief pursuant to Section
13 17203 of the California Business & Professions Code, including restitution of wages wrongfully
14 withheld.

15 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
16 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
17 meal and rest periods, the required amount of compensation for missed meal and rest periods
18 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
19 al necessary business expenses incurred, and failed to provide Fair Labor Standards Act
20 overtime wages due for overtime worked as a result of failing to include non-discretionary
21 incentive compensation into their regular rates of pay for purposes of computing the proper
22 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.
23 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
24 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
25 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

26 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
27 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
28 the other members of the CALIFORNIA CLASS to be underpaid during their employment with

1 DEFENDANT.

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

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

11 56. PLAINTIFFS further demand on behalf of themselves and each member of the
12 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
13 duty paid rest period was not timely provided as required by law.

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

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

25 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
26 to, and do, seek such relief as may be necessary to restore to them the money and property
27 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
28 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and

1 unfair business practices, including earned but unpaid wages for all time worked.

2 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
3 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
4 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
5 engaging in any unlawful and unfair business practices in the future.

6 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
7 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
8 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
9 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
10 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
11 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
12 engage in these unlawful and unfair business practices.

13
14 **SECOND CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

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

17 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**
18 **and Against All Defendants)**

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

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

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

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

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

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

11 68. DEFENDANT's unlawful wage and hour practices manifested, without
12 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
13 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the
14 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

15 69. In committing these violations of the California Labor Code, DEFENDANT
16 inaccurately calculated the correct time worked and consequently underpaid the actual time
17 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
18 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
19 benefits in violation of the California Labor Code, the Industrial Welfare Commission
20 requirements and other applicable laws and regulations.

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

24 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
25 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
26 Members to work without paying them for all the time they were under DEFENDANT's
27 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
28 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than

1 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

5
6 **THIRD CAUSE OF ACTION**

7 **For Failure To Pay Overtime Compensation**

8 **[Cal. Lab. Code § 510]**

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

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

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

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

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

26 80. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage and overtime compensation and interest thereon, together with the
28 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for

1 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

2 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
3 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
4 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
5 including overtime work.

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

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

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

23 85. 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 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not
27 subject to a valid collective bargaining agreement that would preclude the causes of action
28 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of

1 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
2 of non-negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

25 90. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
27 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
28 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and

1 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
2 disregard for their legal rights, or the consequences to them, and with the despicable intent of
3 depriving them of their property and legal rights, and otherwise causing them injury in order
4 to increase company profits at the expense of these employees.

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

16 **FOURTH CAUSE OF ACTION**

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

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

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

21 92. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
22 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
23 paragraphs of this Complaint.

24 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
27 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR
28

1 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
2 duties for the legally required off-duty meal periods. As a result of their rigorous work
3 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from
4 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
5 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
6 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
7 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
8 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period
9 in some workdays in which these employees were required by DEFENDANT to work ten (10)
10 hours of work from time to time. As a result, PLAINTIFFS and other members of the
11 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
12 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

22
23 **FIFTH CAUSE OF ACTION**

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

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

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

28 96. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-

1 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
2 paragraphs of this Complaint.

3 97. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
4 from time to time required to work in excess of four (4) hours without being provided ten (10)
5 minute rest periods. Further, these employees from time to time were denied their first rest
6 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
7 a first and second rest period of at least ten (10) minutes for some shifts worked of between six
8 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
9 some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other
10 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
11 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
12 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
13 periods by DEFENDANT and DEFENDANT's managers.

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

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

23 **SIXTH CAUSE OF ACTION**

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

25 **[Cal. Lab. Code § 226]**

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

28 100. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-

1 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
2 paragraphs of this Complaint.

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

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

23 102. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
24 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
25 wage statements which failed to show, among other things, the correct gross and net wages
26 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
27 employees with an accurate itemized wage statement in writing showing, among other
28 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. PLAINTIFFS and
CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
wage statements should reflect all applicable hourly rates during the pay period and the total
hours worked, and the applicable pay period in which the wages were earned pursuant to
California Labor Code Section 226(a). The wage statements DEFENDANT provided to
PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
such information. More specifically, the wage statements failed to identify the accurate total
hours worked each pay period. When the hours shown on the wage statements were added

up, they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS 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 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

103. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-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, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-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 each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

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

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

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

4 106. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
5 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
6 CLASS members for required expenses incurred in the discharge of their job duties for
7 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
8 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
9 limited to, costs related to using their personal cellular phones on behalf of and for the
10 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
11 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
12 phones in order to perform work related job tasks. DEFENDANT's policy and practice was
13 to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
14 expenses resulting from using their personal cellular phones for DEFENDANT within the
15 course and scope of their employment for DEFENDANT. These expenses were necessary
16 to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
17 conduct to assert any waiver of this expectation. Although these expenses were necessary
18 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,
19 DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
20 LABOR SUB-CLASS members for these expenses as an employer is required to do under
21 the laws and regulations of California.

22 107. PLAINTIFFS therefore demands reimbursement for expenditures or losses
23 incurred by himself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
24 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
25 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

26 **EIGHTH CAUSE OF ACTION**

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

[Cal. Lab. Code §§ 201, 202, 203]

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

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

108. 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.

109. 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."

110. 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.

111. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

112. 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.

113. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-

1 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
2 owed as required by law.

3 114. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
4 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has
5 terminated and who have not been fully paid their wages due to them, PLAINTIFFS demand
6 thirty days of pay as penalty for not paying all wages due at time of termination for all
7 employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
8 PERIOD and demands an accounting and payment of all wages due, plus interest and
9 statutory costs as allowed by law.

10
11 **NINTH CAUSE OF ACTION**

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

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

14 **(By Plaintiff Kissam and Against All Defendants)**

15 115. PLAINTIFFS reallege and incorporate by this reference, as though fully set
16 forth herein, the prior paragraphs of this Complaint.

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

27 117. Plaintiff Kissam, and such persons that may be added from time to time who
28 satisfy the requirements and exhaust the administrative procedures under the Private

1 Attorney General Act, brings this Representative Action on behalf of the State of California
2 with respect to himself and all individuals who are or previously were employed by
3 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
4 EMPLOYEES") during the time period of November 19, 2020 until a date as determined by
5 the Court (the "PAGA PERIOD").

6 118. On November 19, 2021, Plaintiff Kissam gave written notice by electronic
7 mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail
8 to the employer of the specific provisions of this code alleged to have been violated as
9 required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these
10 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
11 PLAINTIFF may pursue a representative civil action under PAGA pursuant to Section 2699
12 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
13 herein defined.

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

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

1 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

7
8 **PRAYER FOR RELIEF**

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

11 1. On behalf of the CALIFORNIA CLASS:

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

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

- 23 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
24 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
25 action pursuant to Cal. Code of Civ. Proc. § 382;
26 B) Compensatory damages, according to proof at trial, including compensatory
27 damages for minimum and overtime compensation due PLAINTIFFS and the
28 other members of the CALIFORNIA LABOR SUB-CLASS, during the

- 1 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
2 at the statutory rate;
- 3 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
4 in which a violation occurs and one hundred dollars (\$100) per each member of
5 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
6 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
7 an award of costs for violation of Cal. Lab. Code § 226;
- 8 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
9 the applicable IWC Wage Order;
- 10 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
11 1197;
- 12 F) The amount of the expenses PLAINTIFFS and each member of the
13 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
14 plus interest, and costs of suit.; and,
- 15 G) The wages of all terminated employees in the CALIFORNIA LABOR
16 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
17 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 18 3. On behalf of the State of California and with respect to all AGGRIEVED
19 EMPLOYEES:
- 20 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
21 General Act of 2004
- 22 4. On all claims:
- 23 A) An award of interest, including prejudgment interest at the legal rate;
24 B) Such other and further relief as the Court deems just and equitable; and,
25 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
26 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
27 and/or §2802.
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Dated: April 18, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: April 18, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiffs