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December 10, 2021

CA2562

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

ST. Jude Medical Center
Certified Mail #70211970000003066583
Howard L. Hibbard, Esq.
142 Stambaugh Street
Redwood City, CA 94063

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by St. Jude Medical Center in California and classified as non-exempt employees during the time period of December 10, 2020 until a date as determined by the Court. Our offices represent Plaintiff Thanh Phan (“Plaintiff”) and other Aggrieved Employees in a lawsuit against St. Jude Medical Center (“Defendant”). Plaintiff has been employed by Defendant in California as a non-exempt employee in the position of Clinical Pharmacist since 2010 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest break (and pay the meal and rest break premiums at the correct regular rates of pay), and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with

their wages, including the “Retro Pay” payments, which were regular wage payments.. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the correct 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 Plaintiff and other Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2) as when the hours were added up they did not equal the actual amount of hours worked each pay period. Further, Defendant violated Cal. Lab. Code Section 226(a)(8) by failing to correctly list the legal entity that employed Plaintiff and other Aggrieved Employees. Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

THANH PHAN, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

ST. JUDE MEDICAL CENTER, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. _____

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, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- and,
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

Plaintiff Thanh Phan ("PLAINTIFF"), an individual, on behalf of herself and all other

1 similarly situated current and former employees alleges on information and belief, except for
2 her own acts and knowledge which are based on personal knowledge, the following:

3
4 **THE PARTIES**

5 1. Defendant St. Jude Medical Center (“DEFENDANT”) is a California corporation
6 that at all relevant times mentioned herein conducted and continues to conduct substantial
7 business in the state of California.

8 2. DEFENDANT is a hospital that was established in 1957 and is located in Orange
9 County, California.

10 3. PLAINTIFF has been employed by DEFENDANT in California since 2010 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 herself 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 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
18 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
19 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
20 (\$5,000,000.00).

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

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

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

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

21 22 THE CONDUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

28 16. DEFENDANT from time to time fails to pay PLAINTIFF and members of the
CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
payroll period in accordance with Cal. Lab. Code § 204(d).

17. DEFENDANT underpays sick pay wages to PLAINTIFF and other

1 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay.
2 Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
3 remuneration, including but not limited to, incentives, shift differential pay, and bonuses.
4 Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to
5 PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

6 18. 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 fails to pay all compensation due to PLAINTIFF and other
9 CALIFORNIA LABOR SUB-CLASS Members, makes unlawful deductions from
10 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,
11 fails to disclose all aspects of the deductions from compensation payable to PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members, and thereby fails to pay these employees all
13 wages due at each applicable pay period and upon termination. PLAINTIFF and members of
14 the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
15 according to proof, related penalties, interest, attorney fees and costs.

16 19. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
17 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
18 incurred by the PLAINTIFF 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 20. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
27 Members as a business expense, are 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 PLAINTIFF and other CALIFORNIA CLASS Members are required by DEFENDANT to use
4 their personal cellular phones. As a result, in the course of their employment with
5 DEFENDANT, PLAINTIFF 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 21. Specifically as to PLAINTIFF, DEFENDANT fails to provide all the legally
9 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
10 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
11 PLAINTIFF. DEFENDANT does not have a policy or practice which provided timely off-duty
12 meal and rest breaks to PLAINTIFF and also fails to compensate PLAINTIFF for PLAINTIFF's
13 missed meal and rest breaks. The nature of the work performed by the PLAINTIFF does not
14 prevent PLAINTIFF from being relieved of all of his duties for the legally required off-duty
15 meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally
16 required meal periods is evidenced by DEFENDANT's business records.

17 **JURISDICTION AND VENUE**

18
19 22. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
21 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
22 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

THE CALIFORNIA CLASS

24. PLAINTIFF brings 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).

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

26. 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 PLAINTIFF 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.

27. 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 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as

1 causation, damages, and reliance are not elements of this claim.

2 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
3 CLASS Members is impracticable.

4 29. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
5 law by:

6 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
7 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
8 deceptively having in place company policies, practices and procedures
9 that failed to record and pay PLAINTIFF and the other members of the
10 CALIFORNIA CLASS for all time worked, including minimum wages
11 owed and overtime wages owed for work performed by these employees;
12 and,

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

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

18 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
19 that the joinder of all such persons is impracticable and the disposition of
20 their claims as a class will benefit the parties and the Court;

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

24 (c) The claims of the representative PLAINTIFF are typical of the claims of
25 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
26 other members of the CALIFORNIA CLASS, was classified as a non-
27 exempt employee paid on an hourly basis who was subjected to the
28 DEFENDANT's deceptive practice and policy which failed to provide the

1 legally required meal and rest periods to the CALIFORNIA CLASS and
2 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
3 CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members
5 of the CALIFORNIA CLASS were and are similarly or identically harmed
6 by the same unlawful, deceptive and unfair misconduct engaged in by
7 DEFENDANT; and,

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

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

- 18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA CLASS will
21 create the risk of:
- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
 - 26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
28 dispositive of interests of the other members not party to the

1 adjudication or substantially impair or impede their ability to
2 protect their interests.

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

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

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

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

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 CALIFORNIA CLASS would as a practical matter be
9 dispositive of the interests of the other members not parties
10 to the adjudication or substantially impair or impede their
11 ability to protect their interests;
- 12 3) In the context of wage litigation because a substantial number of
13 individual CALIFORNIA CLASS Members will avoid asserting
14 their legal rights out of fear of retaliation by DEFENDANT, which
15 may adversely affect an individual's job with DEFENDANT or
16 with a subsequent employer, the Class Action is the only means to
17 assert their claims through a representative; and,
- 18 4) A class action is superior to other available methods for the fair
19 and efficient adjudication of this litigation because class treatment
20 will obviate the need for unduly and unnecessary duplicative
21 litigation that is likely to result in the absence of certification of
22 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

1 members of the CALIFORNIA CLASS.

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

7
8 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

6 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
7 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

23 39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
24 under California law by:

- 25 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
26 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
27 CLASS all wages due for overtime worked, for which DEFENDANT is
28 liable pursuant to Cal. Lab. Code § 1194;

- 1 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
2 accurately pay PLAINTIFF and the members of the CALIFORNIA
3 LABOR SUB-CLASS the correct minimum wage pay for which
4 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 5 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
6 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
7 itemized statement in writing showing the corresponding correct amount
8 of wages earned by the employee;
- 9 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
11 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
12 meal breaks and the legally required off-duty rest breaks;
- 13 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
14 when an employee is discharged or quits from employment, the employer
15 must pay the employee all wages due without abatement, by failing to
16 tender full payment and/or restitution of wages owed or in the manner
17 required by California law to the members of the CALIFORNIA LABOR
18 SUB-CLASS who have terminated their employment; and,
- 19 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
20 the CALIFORNIA LABOR SUB-CLASS members with necessary
21 expenses incurred in the discharge of their job duties.

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

- 24 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
25 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
26 Members is impracticable and the disposition of their claims as a class
27 will benefit the parties and the Court;
- 28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CALIFORNIA
2 LABOR SUB-CLASS and will apply to every member of the
3 CALIFORNIA LABOR SUB-CLASS;

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

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

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

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

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

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

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-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 LABOR SUB-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

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.

42. 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 LABOR

1 SUB-CLASS predominate over any question affecting only individual
2 CALIFORNIA LABOR SUB-CLASS Members;

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

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

12 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
13 Members, will not be able to obtain effective and economic legal redress
14 unless the action is 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 LABOR SUB-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 LABOR SUB-CLASS for the injuries sustained;

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

27 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
28 ascertainable from the business records of DEFENDANT. The

CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

43. 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.

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

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

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

Cal. Bus. & Prof. Code § 17203.

46. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the

1 applicable Industrial Wage Order(s), the California Code of Regulations and the California
2 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,
3 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
4 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
5 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
6 unfair competition, including restitution of wages wrongfully withheld.

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

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

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

28 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful,

1 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
2 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
3 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

28 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further

1 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
2 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
3 engaging in any unlawful and unfair business practices in the future.

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

11
12 **SECOND CAUSE OF ACTION**

13 **For Failure To Pay Minimum Wages**

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

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

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

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

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

27 61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
28 commission is the minimum wage to be paid to employees, and the payment of a less wage than

1 the minimum so fixed in unlawful.

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

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

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

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

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

22 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
23 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
24 Members to work without paying them for all the time they were under DEFENDANT's
25 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
27 were entitled to, constituting a failure to pay all earned wages.

28 68. By virtue of DEFENDANT's unlawful failure to accurately pay all earned

1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS for the true time they worked, PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
4 injury in amounts which are presently unknown to them and which will be ascertained
5 according to proof at trial.

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

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

20 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
22 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
23 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
24 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
25 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
26 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
27 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
28 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein

1 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
2 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

3
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Compensation**

6 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

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

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

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

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

28 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and

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

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

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

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

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

28 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
2 worked that they are entitled to, constituting a failure to pay all earned wages..

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

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

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

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

1 to increase company profits at the expense of these employees.

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

13
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 LABOR SUB-CLASS and Against All**
18 **Defendants)**

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

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

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

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

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

19
20 **FIFTH CAUSE OF ACTION**

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

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

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
24 **Defendants)**

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

28 93. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from

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

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

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

20 **SIXTH CAUSE OF ACTION**

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

22 **[Cal. Lab. Code § 226]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
24 **Defendants)**

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

28 97. Cal. Labor Code § 226 provides that an employer must furnish employees

1 with

2 an “accurate itemized” statement in writing showing:

- 3 (1) gross wages earned,
- 4 (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,
- 5 (3) the number of piece-rate units earned and any applicable piece rate if the employee
is paid on a piece-rate basis,
- 6 (4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,
- 7 (5) net wages earned,
- 8 (6) the inclusive dates of the period for which the employee is paid,
- 9 (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,
- 10 (8) the name and address of the legal entity that is the employer, and
- 11 (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee.

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

26 99. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
27 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
28

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

11
12 **SEVENTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 2802]**

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

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

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

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

26 102. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
27 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
28 CLASS members for required expenses incurred in the discharge of their job duties for
DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the

1 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
2 limited to, costs related to using their personal cellular phones on behalf of and for the
3 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
4 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
5 phones in order to perform work related job tasks. DEFENDANT's policy and practice was
6 to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
7 expenses resulting from using their personal cellular phones for DEFENDANT within the
8 course and scope of their employment for DEFENDANT. These expenses were necessary
9 to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
10 conduct to assert any waiver of this expectation. Although these expenses were necessary
11 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
12 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
13 LABOR SUB-CLASS members for these expenses as an employer is required to do under
14 the laws and regulations of California.

15 103. PLAINTIFF therefore demands reimbursement for expenditures or losses
16 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
17 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
18 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
22 severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

- 24 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
26 B) An order temporarily, preliminarily and permanently enjoining and restraining
27 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
28 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS; and,

3 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
4 for restitution of the sums incidental to DEFENDANT's violations due to
5 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

7 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh Causes of
8 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
9 pursuant to Cal. Code of Civ. Proc. § 382;

10 B) Compensatory damages, according to proof at trial, including compensatory
11 damages for minimum and overtime compensation due PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
13 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
14 statutory rate;

15 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
16 in which a violation occurs and one hundred dollars (\$100) per each member of
17 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
18 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
19 an award of costs for violation of Cal. Lab. Code § 226;

20 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
21 the applicable IWC Wage Order;

22 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
23 1197; and,

24 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
25 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
26 costs of suit.

27 3. On behalf of PLAINTIFF for the Eighth and Ninth Causes of Action:

28 A) For all special damages which were sustained as a result of DEFENDANT's

conduct, including, but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the retaliatory practices of DEFENDANT; and,

B) For all exemplary damages, according to proof, which were sustained as a result of DEFENDANT's conduct.

4. On all claims:

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

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

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

Dated: December 10, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

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

Dated: December 10, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff