

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOW 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 Plaintiff

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 7/28/2022 7:46 AM
Reviewed By: R. Walker
Case #22CV394401
Envelope: 9567240

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF SANTA CLARA**

9 KENNETH NGUYEN, on behalf of the
10 State of California, as a private attorney
11 general, and as an individual, on behalf of
himself and on behalf of all persons
similarly situated,

12
13 Plaintiff,

14 vs.

15 PORT PLASTICS, INC., a California
16 Corporation; and DOES 1 through 50,
inclusive,

17
18 Defendants.

Lead Case No.: 22CV394401

[Related Case: 22CV394403]

CONSOLIDATED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
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;
9. DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA;
10. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and,
11. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT is a plastics distribution company.

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

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

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

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

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

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

23 THE CONDUCT

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

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

26 9. State and federal law provides that employees must be paid overtime and meal and
27 rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and
28

1 other CALIFORNIA CLASS Members were compensated at an hourly rate plus incentive pay
2 that was tied to specific elements of an employee's performance.

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

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

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 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF 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. PLAINTIFF 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 PLAINTIFF and
20 other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on
21 DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA CLASS Members
22 cannot leave the work premises during their rest period.

23 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
24 record and pay PLAINTIFF 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 PLAINTIFF and other CALIFORNIA CLASS Members
27 for all time worked, meaning the time during which an employee was subject to the control of
28

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

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

1 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

5 Cal. Lab. Code § 210 provides:

6 [I]n addition to, and entirely independent and apart from, any other penalty provided in
7 this article, every person who fails to pay the wages of each employee as provided in
8 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
9 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.

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

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

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

23 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
24 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
25 discretionary incentive wages which increased their regular rate of pay. However, when sick
26 pay was paid, it was paid at the base rate of pay for PLAINTIFF and members of the
27 CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay, as required under
28

1 Cal. Lab. Code Section 246.

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

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

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

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

11 24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
12 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
13 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
14 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
15 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
16 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
17 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for
18 the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
19 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
20 records. Additionally, in August of 2021 and continuing throughout the rest of his employment,
21 PLAINTIFF engaged in protected activity by complaining to DEFENDANT of DEFENDANT's
22 illegal employment practices, including, but not limited to, DEFENDANT's failure to properly
23 maintain standard safety measures at PLAINTIFF's job site and potential violations of
24 California's Occupational Safety and Health Act of 1973. PLAINTIFF complained to, among
25 other people, DEFENDANT's warehouse manager Matthew Perez, about the dangerous
26 working conditions, including but not limited to, the stacking of wooden pallets with no safety
27 racks that created a falling hazard for the warehouse employees. PLAINTIFF also complained
28

1 about the DEFENDANT's lack of sprinklers as required by law to prevent the
2 acrylic/polycarbonate inventory from catching fire. PLAINTIFF also complained about other
3 employees who were not forklift certified, operating DEFENDANT's forklifts and causing
4 accidents within the warehouse. Additionally, PLAINTIFF complained about the
5 discrimination he faced as a result of him being Asian, and more specifically, Vietnamese.
6 DEFENDANT's employees would call PLAINTIFF the "Golden Child Kim Joong-Un" and
7 "Little Buddha" in reference to North Korea's president and also placed a placard on
8 DEFENDANT's bathroom entitled "Ken's Office." Further, when a container arrived at
9 DEFENDANT's warehouse, Matthew Perez the Warehouse Manager would make anti-Asian
10 racist remarks. PLAINTIFF complained to his General Manager Ryan Kimichick and Regional
11 Manager Cinithia Snell about the workplace safety issues and the anti-Asian racism he endured
12 but to no avail as the harassment and discrimination was pervasive throughout his employment
13 until he was terminated.

14 25. Subsequent to PLAINTIFF's participation in protective activity by complaining
15 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
16 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
17 after PLAINTIFF complained to his supervisor(s) of DEFENDANT's unlawful employment
18 practices in August of 2021 and throughout the rest of his employment, DEFENDANT
19 terminated PLAINTIFF's employment with RESPONDENT in October of 2021. As a result,
20 there is a causal link between the protected activity and DEFENDANT's decision to terminate
21 her employment, which is against public policy. As a direct consequence of PLAINTIFF's
22 complaints to DEFENDANT about the safety issues and the racial/ethnic discrimination
23 PLAINTIFF was forced to endure, DEFENDANT retaliated against PLAINTIFF by terminating
24 his employment in October of 2021. Prior to filing this action, PLAINTIFF exhausted his
25 administrative remedies by filing a timely administrative complaint with the Department of Fair
26 Employment and Housing ("DFEH") and received a DFEH right-to-sue letter on February 2,
27 2022.

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

- 2
- 3
- 4
- 5

6
7
8
9
0

2

3
4
5
6
7
8
9
10
11

234

25
26
27

1 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
2 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
4 permits or suffers to permit this work.

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

14 32. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 33. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
17 law by:

- 18 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
19 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
20 deceptively having in place company policies, practices and procedures
21 that failed to record and pay PLAINTIFF and the other members of the
22 CALIFORNIA CLASS for all time worked, including minimum wages
23 owed and overtime wages owed for work performed by these employees;
24 and,
- 25 (b) Committing an act of unfair competition in violation of the UCL, by
26 failing to provide the PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with the legally required meal and rest periods.
28

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

- 3 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
4 that the joinder of all such persons is impracticable and the disposition of
5 their claims as a class will benefit the parties and the Court;
- 6 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
7 that are raised in this Complaint are common to the CALIFORNIA
8 CLASS will apply to every member of the CALIFORNIA CLASS;
- 9 (c) The claims of the representative PLAINTIFF are typical of the claims of
10 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
11 other members of the CALIFORNIA CLASS, was classified as a non-
12 exempt employee paid on an hourly basis who was subjected to the
13 DEFENDANT's deceptive practice and policy which failed to provide the
14 legally required meal and rest periods to the CALIFORNIA CLASS and
15 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
16 CLASS. PLAINTIFF sustained economic injury as a result of
17 DEFENDANT's employment practices. PLAINTIFF and the members
18 of the CALIFORNIA CLASS were and are similarly or identically harmed
19 by the same unlawful, deceptive and unfair misconduct engaged in by
20 DEFENDANT; and,
- 21 (d) The representative PLAINTIFF will fairly and adequately represent and
22 protect the interest of the CALIFORNIA CLASS, and has retained
23 counsel who are competent and experienced in Class Action litigation.
24 There are no material conflicts between the claims of the representative
25 PLAINTIFF and the members of the CALIFORNIA CLASS that would
26 make class certification inappropriate. Counsel for the CALIFORNIA
27 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
28

Members.

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

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

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

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 PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be

necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

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

3) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA CLASS Members will avoid asserting
2 their legal rights out of fear of retaliation by DEFENDANT, which
3 may adversely affect an individual's job with DEFENDANT or
4 with a subsequent employer, the Class Action is the only means to
5 assert their claims through a representative; and,

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

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

- 13 (a) The questions of law and fact common to the CALIFORNIA CLASS
14 predominate over any question affecting only individual CALIFORNIA
15 CLASS Members because the DEFENDANT's employment practices are
16 applied with respect to the CALIFORNIA CLASS;
- 17 (b) A Class Action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the CALIFORNIA
19 CLASS because in the context of employment litigation a substantial
20 number of individual CALIFORNIA CLASS Members will avoid
21 asserting their rights individually out of fear of retaliation or adverse
22 impact on their employment;
- 23 (c) The members of the CALIFORNIA CLASS are so numerous that it is
24 impractical to bring all members of the CALIFORNIA CLASS before the
25 Court;
- 26 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
27 able to obtain effective and economic legal redress unless the action is
28

maintained as a Class Action;

- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; 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 CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

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

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

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

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

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

27 42. Common questions of law and fact exist as to members of the CALIFORNIA
28

1 LABOR SUB-CLASS, including, but not limited, to the following:

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

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

- 17 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
18 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
19 CLASS all wages due for overtime worked, for which DEFENDANT is
20 liable pursuant to Cal. Lab. Code § 1194;
- 21 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
22 accurately pay PLAINTIFF and the members of the CALIFORNIA
23 LABOR SUB-CLASS the correct minimum wage pay for which
24 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 25 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
27 itemized statement in writing showing the corresponding correct amount
28

1 of wages earned by the employee;

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

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

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

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

17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
18 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
19 Members is impracticable and the disposition of their claims as a class
20 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 LABOR SUB-CLASS and will apply to every member of the
24 CALIFORNIA LABOR SUB-CLASS;

25 (c) The claims of the representative PLAINTIFF are typical of the claims of
26 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
27 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
28

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

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

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

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

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

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:

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

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

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

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

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

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

27 (b) A Class Action is superior to any other available method for the fair and
28

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

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

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

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

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

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

24 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
25 ascertainable from the business records of DEFENDANT. The
26 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
27 CLASS Members who worked for DEFENDANT in California at any
28

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)

47. 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.

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

49. 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.

50. 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 applicable Industrial Wage Order(s), the California Code of Regulations and the California

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

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

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

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

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

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 55. Therefore, PLAINTIFF demands on behalf of himself 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 56. PLAINTIFF further demands on behalf of himself 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 57. 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 58. 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 59. 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.

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

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

12
13 **SECOND CAUSE OF ACTION**

14 **For Failure To Pay Minimum Wages**

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

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

17 **and Against All Defendants)**

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

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

26 64. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
27 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 PLAINTIFF 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 PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS.

11 68. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
12 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
13 a policy and practice that denies accurate compensation to PLAINTIFF and the other members
14 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 PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF 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, PLAINTIFF and the other
28

1 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
2 were entitled to, constituting a failure to pay all earned wages.

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

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

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

23 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
25 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
26 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
27 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
28

1 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
2 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
3 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
4 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
5 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
6 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

7
8 **THIRD CAUSE OF ACTION**

9 **For Failure To Pay Overtime Compensation**

10 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

9 82. 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 failed to accurately record overtime worked by PLAINTIFF and other
12 CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime
14 worked, including, the overtime work performed in excess of eight (8) hours in a workday,
15 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

25 85. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
26 from the overtime requirements of the law. None of these exemptions are applicable to the
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
28

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
2 subject to a valid collective bargaining agreement that would preclude the causes of action
3 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
4 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
5 negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

26 ///

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

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

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

25 99. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
27 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
28

1 suit.

2 **SIXTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code § 226]**

5 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
6 **Defendants)**

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

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

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

102. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
wage statements which failed to show, among other things, the correct gross and net wages
earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
employees with an accurate itemized wage statement in writing showing, among other
things, gross wages earned and all applicable hourly rates in effect during the pay period and

1 the corresponding amount of time worked at each hourly rate. PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
3 wage statements should reflect all applicable hourly rates during the pay period and the total
4 hours worked, and the applicable pay period in which the wages were earned pursuant to
5 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
6 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
7 such information. More specifically, the wage statements failed to identify the accurate total
8 hours worked each pay period. When the hours shown on the wage statements were added
9 up, they did not equal the actual total hours worked during the pay period. Aside, from the
10 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
11 itemized wage statement that lists all the requirements under California Labor Code 226 *et*
12 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated
14 Cal. Lab. Code § 226.

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

27 ///

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

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

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

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

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

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

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

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

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

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

8
9 **EIGHTH CAUSE OF ACTION**

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

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

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
13 **and Against All Defendants)**

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

17 109. Cal. Lab. Code § 200 provides, in relevant part, that:

18 As used in this article:

19 (a) "Wages" includes all amounts for labor performed by employees of
20 every description, whether the amount is fixed or ascertained by the
21 standard of time, task, piece, Commission basis, or other method of calculation.

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

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

111. 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

1 other provision of law, an employee who quits without providing a 72-
2 hour notice shall be entitled to receive payment by mail if he or she so
3 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.

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

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

7 If an employer willfully fails to pay, without abatement or reduction, in
8 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
9 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.

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

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

20 **NINTH CAUSE OF ACTION**

21 **For Violation of Government Code Section 12940**

22 116. PLAINTIFF realleges and incorporate by this reference, as though fully set
23 forth herein, the prior paragraphs of this Complaint.

24 117. PLAINTIFF, at all relevant times, had the right to work in an environment
25 free of religious creed and/or national origin harassment/discrimination.

26 118. In the State of California, the legislature has enacted Government Code
27
28

1 §12940(j)(1) which forbids religious creed and/or national origin harassment, and imposes
2 several affirmative duties upon the employer to ensure employees are not subjected to
3 unlawful religious creed and/or national origin harassment at work. DEFENDANT directed
4 its offensive, unwelcome, religious creed and/or national origin misconduct toward
5 PLAINTIFF because of PLAINTIFF's affiliation as Asian..

6 119. PLAINTIFF was subjected to unwelcome racial/national origin harassment.

7 120. The harassing conduct was severe or pervasive.

8 121. A reasonable Asian in PLAINTIFF's circumstances would have considered
9 the work environment to be hostile or abusive.

10 122. PLAINTIFF considered his work environment to be racially hostile or
11 abusive.

12 123. DEFENDANT's managers and/or supervisors engaged in the wrongful
13 conduct.

14 124. The foregoing conduct by DEFENDANT constitutes unlawful creed and/or
15 national origin harassment, and created a hostile, abusive and discriminatory work
16 environment and disrupted PLAINTIFF's emotional tranquility in the workplace and altered
17 the terms or conditions of his employment.

18 125. DEFENDANT's conduct, as set forth and alleged herein, constitutes a
19 violation of Government Code §12940 *et seq.* which prohibits racial harassment by an
20 employer, manager, supervisor, co-worker or vendor, et al.

21 126. As a result of DEFENDANT's actions and the substantial motivating reason
22 for said actions was racial and/or national origin harassment/discrimination, PLAINTIFF
23 has suffered, substantial losses in earnings upon his wrongful termination and employment
24 benefits and emotional distress in an amount to be determined according to proof at trial.
25 PLAINTIFF is further entitled to attorney's fees and costs of suit pursuant to Government
26 Code §12900 *et seq.*
27
28

127. In doing the acts herein alleged, DEFENDANT acted with malice and oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary and punitive damages from DEFENDANT in an amount to be determined to punish DEFENDANT and to deter such wrongful conduct in the future.

TENTH CAUSE OF ACTION

Wrongful Termination In Violation of Public Policy
(By PLAINTIFF Against All Defendants)

128. PLAINTIFF realleges and incorporates by reference, as though fully set forth herein, the prior paragraphs of this Complaint. In retaliation for complaining to DEFENDANT of DEFENDANT's violations of law, as set forth herein, DEFENDANT retaliated against and wrongfully discharged PLAINTIFF from employment, in violation of Cal. Lab. Code Sections 1102.5 and 6310.

129. In August of 2021 and continuing throughout the rest of his employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of DEFENDANT's illegal employment practices, including, but not limited to, DEFENDANT's failure to properly maintain standard safety measures at PLAINTIFF's job site and potential violations of California's Occupational Safety and Health Act of 1973. PLAINTIFF complained to, among other people, DEFENDANT's warehouse manager Matthew Perez, about the dangerous working conditions, including but not limited to, the stacking of wooden pallets with no safety racks that created a falling hazard for the warehouse employees. PLAINTIFF also complained about the DEFENDANT's lack of sprinklers as required by law to prevent the acrylic/polycarbonate inventory from catching fire. PLAINTIFF also complained about other employees who were not forklift certified, operating DEFENDANT's forklifts and causing accidents within the warehouse. Additionally, PLAINTIFF complained about the discrimination he faced as a result of him

1 being Asian. DEFENDANT's employees would call PLAINTIFF the "Golden Child Kim
2 Joong-Un" in reference to North Korea's president and also placed a placard on
3 DEFENDANT's bathroom entitled "Ken's Office." PLAINTIFF complained to his General
4 Manager Ryan Kimichick and Regional Manager Cinithia Snell about the workplace safety
5 issues and the anti-Asian racism he endured but to no avail as the harassment and
6 discrimination was pervasive throughout his employment until he was terminated.

7 130. Subsequent to PLAINTIFF's participation in protective activity by
8 complaining to DEFENDANT of DEFENDANT's unlawful employment practices,
9 DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against
10 PLAINTIFF. Specifically, after PLAINTIFF complained to his supervisor(s) of
11 DEFENDANT's unlawful employment practices in August of 2021 and throughout the rest
12 of his employment, DEFENDANT terminated PLAINTIFF's employment with
13 RESPONDENT in October of 2021. As a result, there is a causal link between the protected
14 activity and DEFENDANT's decision to terminate his employment, which is against public
15 policy. As a direct consequence of PLAINTIFF's complaints to DEFENDANT about the
16 safety issues and the racial/ethnic discrimination PLAINTIFF was forced to endure,
17 DEFENDANT retaliated against PLAINTIFF by terminating his employment in October of
18 2021

19 131. DEFENDANT terminated PLAINTIFF's employment in violation of various
20 fundamental public policies underlying both state and federal laws. Specifically,
21 PLAINTIFF's employment was terminated in part because of his protected status. These
22 actions were in violation of FEHA, the California Constitution, and California Labor Code
23 Section 1102.5.

24 132. As a proximate result of DEFENDANT's wrongful termination of
25 PLAINTIFF's employment violation of fundamental public policies, PLAINTIFF has
26
27
28

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

3 133. As a result of DEFENDANT's wrongful termination of PLAINTIFF's
4 employment, PLAINTIFF has suffered general and special damages in sums according to
5 proof.

6 134. DEFENDANT's wrongful termination of PLAINTIFF's employment was
7 done intentionally, in a malicious, fraudulent, oppressive manner entitling PLAINTIFF to
8 punitive damages.

9 135. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
10 fees. Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*

11 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

17 137. 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.

1 138. PLAINTIFF, and such persons that may be added from time to time who
2 satisfy the requirements and exhaust the administrative procedures under the Private
3 Attorney General Act, brings this Representative Action on behalf of the State of California
4 with respect to himself and all individuals who are or previously were employed by
5 DEFENDANT in California and classified as non-exempt employees (“AGGRIEVED
6 EMPLOYEES”) during the time period of December 9, 2020 until a date as determined by
7 the Court (the "PAGA PERIOD").

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

16 140. The policies, acts and practices heretofore described were and are an unlawful
17 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
18 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
19 properly record and provide legally required meal and rest periods, (c) failed to pay
20 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
21 reimburse employees for required expenses, and (f) failed to pay wages when due, all in
22 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
23 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
24 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
25 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
26
27
28

1 conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
2 Code Private Attorney General Act of 2004 as the representative of the State of California
3 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES.

5 141. All of the conduct and violations alleged herein occurred during the PAGA
6 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
7 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
8 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
9 2018.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
12 severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

24 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
25

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

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

- 1 C) Statutory damages, penalties and attorney's fees;
2 D) For punitive damages in an amount necessary to make an example of and to
3 punish DEFENDANT and deter DEFENDANT from engaging in future similar
4 conduct;
5 E) For loss of earnings (both past and future); and,
6 F) For interest at the legal rate in an amount according to proof.
7 4. On behalf of the State of California and with respect to all AGGRIEVED
8 EMPLOYEES:
9 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
10 General Act of 2004.
11 5. On all claims:
12 A) An award of interest, including prejudgment interest at the legal rate;
13 B) Such other and further relief as the Court deems just and equitable; and,
14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
15 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
16 and/or §2802.

17 Dated: July 28, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

21 By: /s/ Nicholas De Blouw
22 Nicholas J. De Blouw
23 *Attorneys for Plaintiff*

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

DEMAND FOR A JURY TRIAL

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

Dated: July 28, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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