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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

LINDSEY SUMNICHT, ZOLA
STAMPER, and FARRAH ALIZADEH,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiff,

vs.

AMN SERVICES, LLC, a Limited
Liability Company; and DOES 1 through
50, inclusive,

Defendants.

Case No. **22CV397191**

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR A JURY TRIAL

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1 Plaintiffs Lindsey Sumnicht and Zola Stamper (“PLAINTIFFS”), individually, on behalf
2 of themselves and all other similarly situated current and former employees allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

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

10 2. DEFENDANT offers medical staffing and talent solutions.

11 3. Plaintiff Lindsey Sumnicht was employed by DEFENDANT in California from
12 November 9, 2021 to February of 2022 and was at all times classified by DEFENDANT as a
13 non-exempt employee entitled to the legally required meal and rest periods and payment of
14 minimum and overtime wages due for all time worked. Plaintiff Zola Stamper was employed
15 by DEFENDANT in California from December of 2021 to February of 2023 and was at all
16 times classified by DEFENDANT as a non-exempt employee entitled to the legally required
17 meal and rest periods and payment of minimum and overtime wages due for all time worked.
18 Plaintiff Farrah Alizadeh was employed by DEFENDANT in California from December 9, 2018
19 to September 16, 2022 and was at all times classified by DEFENDANT as a non-exempt
20 employee entitled to the legally required meal and periods and payment of minimum and
21 overtime wages due for all time worked.

22 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California
23 class, defined as all individuals who are or previously were employed by DEFENDANT in
24 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
25 during the period beginning July 8, 2021 and ending on the date as determined by the Court (the
26 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
27 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

28 5. PLAINTIFFS bring this Class Action on behalf of themselves and a

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

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

20 7. The agents, servants and/or employees of the Defendants and each of them acting
21 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
22 agent, servant and/or employee of the Defendants, and personally participated in the conduct
23 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
24 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
25 all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
26 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
27 Defendants' agents, servants and/or employees.
28

THE CONDUCT

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

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

10. The second component of PLAINTIFFS' and other CALIFORNIA CLASS Members' compensation is DEFENDANT's non-discretionary incentive program that paid

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

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

1 DEFENDANT's corporate policy and practice.

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

22 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
23 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
24 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
25 DEFENDANT was required to pay PLAINTIFFS and other CALIFORNIA CLASS Members
26 for all time worked, meaning the time during which an employee was subject to the control of
27 an employer, including all the time the employee was permitted or suffered to permit this work.
28 DEFENDANT required these employees to work off the clock without paying them for all the

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

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

20 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
21 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
22 wages are paid not more than seven (7) calendar days following the close of the payroll period.
23 Cal. Lab. Code § 210 provides:

24 [I]n addition to, and entirely independent and apart from, any other penalty provided in
25 this article, every person who fails to pay the wages of each employee as provided in
26 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
27 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
28 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.

16. DEFENDANT from time to time failed to pay PLAINTIFFS and members of the

1 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
2 payroll period in accordance with Cal. Lab. Code § 204(d).

3 17. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
4 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
5 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
6 employees earn non-discretionary remuneration including, but not limited to “Per Diem”
7 payments. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
8 pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

27. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and

1 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
2 period beginning July 8, 2021 and ending on the date as determined by the Court (the
3 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
4 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

28 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.

1 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
2 deceptively having in place company policies, practices and procedures
3 that failed to record and pay PLAINTIFFS and the other members of the
4 CALIFORNIA CLASS for all time worked, including minimum wages
5 owed and overtime wages owed for work performed by these employees;
6 and,

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

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

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

1 DEFENDANT; and,

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

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

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

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

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

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

of the CALIFORNIA CLASS as required by law;

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

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

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

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

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

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

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

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

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

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

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

THE CALIFORNIA LABOR SUB-CLASS

37. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California and classified as non exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period July 8, 2021 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

1 amount of wages earned by the employee;

2 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
3 PLAINTIFFS and the other members of the CALIFORNIA LABOR
4 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
5 minute 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 PLAINTIFFS
13 and the CALIFORNIA LABOR SUB-CLASS members with necessary
14 expenses incurred in the discharge of their job duties.

15 43. 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 PLAINTIFFS are typical of the claims of
26 each member of the CALIFORNIA LABOR SUB-CLASS.
27 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
28 SUB-CLASS, was a non-exempt employee paid on an hourly basis who

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

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

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

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

- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA LABOR SUB-CLASS which
24 would establish incompatible standards of conduct for the parties
25 opposing the CALIFORNIA LABOR SUB-CLASS; or,
26 2) Adjudication with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS which would as a practical
28 matter be dispositive of interests of the other members not party to

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

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

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

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

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

26 A. Inconsistent or varying adjudications with respect to
27 individual members of the CALIFORNIA LABOR SUB-
28 CLASS, which would establish incompatible standards of

1 conduct for the DEFENDANT; and/or,

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

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

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

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

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

24 (b) A Class Action is superior to any other available method for the fair and
25 efficient adjudication of the claims of the members of the CALIFORNIA
26 LABOR SUB-CLASS because in the context of employment litigation a
27 substantial number of individual CALIFORNIA LABOR SUB-CLASS
28 Members will avoid asserting their rights individually out of fear of

1 retaliation or adverse impact on their employment;

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

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

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

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

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

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

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

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

5 46. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

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

10 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver, as
17 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.

18 Cal. Bus. & Prof. Code § 17203.

19 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California
22 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,
23 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
24 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
25 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
26 unfair competition, including restitution of wages wrongfully withheld.

27 50. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
28 unfair in that these practices violate public policy, were immoral, unethical, oppressive,

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

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

16 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
17 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
18 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
19 DEFENDANT.

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

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

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

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

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

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

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

24 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
26 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
27 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
28 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer

1 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
2 engage in these unlawful and unfair business practices.

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

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

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

8 **and Against All Defendants)**

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

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

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

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

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

24 66. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
26 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
27 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS.

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

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

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

14 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
15 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
16 Members to work without paying them for all the time they were under DEFENDANT's
17 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
19 they were entitled to, constituting a failure to pay all earned wages.

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

26 72. DEFENDANT knew or should have known that PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
28 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,

1 to not pay employees for their labor as a matter of company policy, practice and procedure, and
2 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
3 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

23
24 **THIRD CAUSE OF ACTION**

25 **For Failure To Pay Overtime Compensation**

26 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

20 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
21 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
22 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
23 including overtime work.

24 81. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
25 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
26 a policy and practice that failed to accurately record overtime worked by PLAINTIFFS and
27 other CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime

1 worked, including, the overtime work performed in excess of eight (8) hours in a workday,
2 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

12 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
13 from the overtime requirements of the law. None of these exemptions are applicable to the
14 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
15 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not
16 subject to a valid collective bargaining agreement that would preclude the causes of action
17 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of
18 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
19 of non-negotiable, non-waiveable rights provided by the State of California.

20 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
21 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
22 overtime worked than they are entitled to, constituting a failure to pay all earned wages.

23 86. DEFENDANT failed to accurately pay the PLAINTIFFS and the other members
24 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
25 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
26 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR
27 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
28 failed to accurately record and pay as evidenced by DEFENDANT's business records and

1 witnessed by employees.

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

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

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

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

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

5
6 **FOURTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

14 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
15 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
16 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
17 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR
18 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
19 duties for the legally required off-duty meal periods. As a result of their rigorous work
20 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from
21 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
22 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
23 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
24 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
25 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period
26 in some workdays in which these employees were required by DEFENDANT to work ten (10)
27 hours of work from time to time. As a result, PLAINTIFFS and other members of the
28 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional

1 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11
12 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

12 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

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

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

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

- 22 (1) gross wages earned,
- 23 (2) total hours worked by the employee, except for any employee whose
compensation is solely based on a salary and who is exempt from payment of
24 overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission,
- 25 (3) the number of piecerate units earned and any applicable piece rate if the employee
is paid on a piece-rate basis,
- 26 (4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,
- 27 (5) net wages earned,
- 28 (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by
January 1, 2008, only the last four digits of his or her social security number or an

1 employee identification number other than a social security number may be shown on
2 the itemized statement,
3 (8) the name and address of the legal entity that is the employer, and
4 (9) all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

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

18 102. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
19 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
20 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
21 expended calculating the correct wages for all missed meal and rest breaks and the amount
22 of employment taxes which were not properly paid to state and federal tax authorities.
23 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
24 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
25 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
26 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
27 226, in an amount according to proof at the time of trial (but in no event more than four
28 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
CALIFORNIA LABOR SUB-CLASS herein).

1 **SEVENTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 2802]**

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

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

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

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

15 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
16 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
17 CLASS members for required expenses incurred in the discharge of their job duties for
18 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
19 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
20 limited to, costs related to using their personal cellular phones on behalf of and for the
21 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
22 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
23 phones and personal home offices in order to perform work related job tasks.
24 DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and the
25 CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
26 personal cellular phones for DEFENDANT within the course and scope of their employment
27 for DEFENDANT. These expenses were necessary to complete their principal job duties.
28 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS

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

4 106. PLAINTIFFS therefore demand reimbursement for expenditures or losses
5 incurred by themselves and the CALIFORNIA LABOR SUB-CLASS members in the
6 discharge of their job duties for DEFENDANT, or their obedience to the directions of
7 DEFENDANT, 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 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**
13 **and Against All Defendants)**

14 107. PLAINTIFFS, 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.

17 108. 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.

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

109. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his
or her employment, his or her wages shall become due and payable not
later than 72 hours thereafter, unless the employee has given 72 hours
previous notice of his or her intention to quit, in which case the employee
is entitled to his or her wages at the time of quitting. Notwithstanding any
other provision of law, an employee who quits without providing a 72-

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

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

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

8 If an employer willfully fails to pay, without abatement or reduction, in
9 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
10 employee who is discharged or who quits, the wages of the employee shall
11 continue as a penalty from the due date thereof at the same rate until paid
12 or until an action therefor is commenced; but the wages shall not continue
13 for more than 30 days.

14 113. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
15 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
16 owed as required by law.

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

24 **NINTH CAUSE OF ACTION**

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

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

27 **(By Plaintiff Lindsey Sumnicht and Against All Defendants)**

28 115. Plaintiff Lindsey Sumnicht realleges and incorporates by this reference, as
though fully set forth herein, the prior paragraphs of this Complaint.

116. PAGA is a mechanism by which the State of California itself can enforce state
labor laws through the employee suing under the PAGA who do so as the proxy or agent of

1 the state's labor law enforcement agencies. An action to recover civil penalties under
2 PAGA is fundamentally a law enforcement action designed to protect the public and not to
3 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
4 but to create a means of "deputizing" citizens as private attorneys general to enforce the
5 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
6 public interest to allow aggrieved employees, acting as private attorneys general to recover
7 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
8 claims cannot be subject to arbitration.

9 117. Plaintiff Lindsey Sumnicht, and such persons that may be added from time to
10 time who satisfy the requirements and exhaust the administrative procedures under the
11 Private Attorney General Act, brings this Representative Action on behalf of the State of
12 California with respect to herself and all individuals who are or previously were employed
13 by DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
14 EMPLOYEES") during the time period of February 19, 2022 until a date as determined by
15 the Court (the "PAGA PERIOD").

16 118. On January 31, 2022, Plaintiff Lindsey Sumnicht gave written notice by
17 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
18 certified mail to the employer of the specific provisions of this code alleged to have been
19 violated as required by Labor Code § 2699.3. The statutory waiting period for Plaintiff
20 Lindsey Sumnicht to add these allegations to the Complaint has expired. As a result,
21 pursuant to Section 2699.3, Plaintiff Lindsey Sumnicht may now commence a representative
22 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California
23 with respect to all AGGRIEVED EMPLOYEES as herein defined.

24 119. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because DEFENDANT (a) failed to provide Plaintiff Lindsey
26 Sumnicht and the AGGRIEVED EMPLOYEES accurate itemized wage statements, (b)
27 failed to properly record and provide legally required meal and rest periods, (c) failed to pay
28 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to

1 reimburse for required expenses, and (f) failed to pay wages when due, all in violation of the
2 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
3 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
4 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
5 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ Plaintiff
6 Lindsey Sumnicht hereby seeks recovery of only civil penalties as prescribed by the Labor
7 Code Private Attorney General Act of 2004 as the representative of the State of California
8 for the illegal conduct perpetrated on Plaintiff Lindsey Sumnicht and the other
9 AGGRIEVED EMPLOYEES.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

25 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
26

27 _____
28 ¹Plaintiff Lindsey Sumnicht specifically excludes and/or does not allege any claims under
California Labor 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 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFFS and the
6 other members of the CALIFORNIA LABOR SUB-CLASS, during the
7 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
8 at the statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;
- 16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197;
- 18 F) The amount of the expenses PLAINTIFFS and each member of the
19 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
20 plus interest, and costs of suit.; and,
- 21 G) The wages of all terminated employees in the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
23 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 24 4. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:
- 26 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004
- 28 5. On all claims:

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DEMAND FOR A JURY TRIAL

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

Dated: September 4, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
HAINES LAW GROUP, APC

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