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ELECTRONICALLY FILED

Superior Court of California

County of Sacramento

11/20/2024

By: A. Turner Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

NINA MCPHERSON and DOREEN HUPP,
individuals, on behalf of themselves and on
behalf of all persons similarly situated

Plaintiffs,

vs.

GENERAL LOGISTICS SYSTEMS US,
INC., a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 34-2022-00318236

[consolidated with Case No.
34-2022-00318125]

**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

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

5
6 **THE PARTIES**

7 1. Defendant General Logistics Systems US, Inc. (“DEFENDANT”) is a California
8 Corporation that at all relevant times mentioned herein conducted and continues to conduct
9 substantial business in the state of California.

10 2. DEFENDANT provides ground and overnight delivery services.

11 3. Plaintiff McPherson was employed by DEFENDANT in California from February
12 of 2010 to September of 2021 and was at all times classified by DEFENDANT as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

15 4. Plaintiff Hupp was employed by DEFENDANT in California from August of
16 2010 to September of 2021 and was at all times classified by DEFENDANT as a non-exempt
17 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
18 payment of minimum and overtime wages due for all time worked.

19 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
20 class, defined as all individuals who are or previously were employed by DEFENDANT in
21 California and classified as non-exempt employees and all individuals who are or previously
22 were employed by DEFENDANT who were classified as Inside Sales Employees but excluding
23 employees who were employed as drivers (the “CALIFORNIA CLASS”) at any time during
24 the period of August 30, 2019, to July 31, 2024 (the “CALIFORNIA CLASS PERIOD”). The
25 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
26 million dollars (\$5,000,000.00).

27 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California
28 Inside Sales Subclass, defined as all individuals who are or previously were employed by

1 Defendant who were classified as Inside Sales Employees from August 30, 2029, to July 31,
2 2024, excluding drivers (the "CALIFORNIA INSIDE SALES SUBCLASS").

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

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

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

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

3
4 **THE CONDUCT**

5 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
6 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
7 meaning the time during which an employee is subject to the control of an employer, including
8 all the time the employee is suffered or permitted to work. DEFENDANT requires
9 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the
10 time they are under DEFENDANT's control. Among other things, DEFENDANT requires
11 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
12 duty meal break. PLAINTIFFS are from time to time interrupted by work assignments while
13 clocked out for what should be PLAINTIFFS' off-duty meal break. PLAINTIFFS and the other
14 CALIFORNIA CLASS Members also worked off the clock with respect to time spent
15 undergoing mandatory drug testing or any other testing and/or examination required as a
16 condition of employment. DEFENDANT, as a matter of established company policy and
17 procedure, administers a uniform practice of rounding the actual time worked and recorded by
18 PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT,
19 so that during the course of their employment, PLAINTIFFS and CALIFORNIA CLASS
20 Members were paid less than they would have been paid had they been paid for actual recorded
21 time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of
22 requiring PLAINTIFFS and CALIFORNIA CLASS Members to perform work off the clock
23 in that DEFENDANT, as a condition of employment, required these employees to submit to
24 mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to
25 clocking into DEFENDANT's timekeeping system for the workday. Further, during the time
26 period of April 12, 2018 until the end of April of 2020, PLAINTIFFS were paid an hourly rate,
27 plus commissions, but, beginning May 1, 2020, DEFENDANT unlawfully forced PLAINTIFFS
28 to forfeit the commission they were earning by converting their pay structure to salary only.

1 DEFENDANT violated the law that required that earned commissions continue to be paid to
2 sales employees who earned the commissions. As a result, PLAINTIFFS and other
3 CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation,
4 commission wages, and off-duty meal breaks by working without their time being correctly
5 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice
6 not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is
7 evidenced by DEFENDANT's business records.

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

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

27 12. As a result of their rigorous work schedules, PLAINTIFFS and other
28 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off

1 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and
2 other CALIFORNIA CLASS Members were required from time to time to perform work as
3 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
4 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and
5 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
6 which these employees were required by DEFENDANT to work ten (10) hours of work.
7 DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
8 penalties to PLAINTIFFS and other CALIFORNIA CLASS Members. PLAINTIFFS and other
9 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
10 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

1 DEFENDANT's rule which states PLAINTIFFS and other CALIFORNIA CLASS Members
2 cannot leave the work premises during their rest period.

3 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
4 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
5 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
6 DEFENDANT was required to pay PLAINTIFFS and other CALIFORNIA CLASS Members
7 for all time worked, meaning the time during which an employee was subject to the control of
8 an employer, including all the time the employee was permitted or suffered to permit this work.
9 DEFENDANT required these employees to work off the clock without paying them for all the
10 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
11 known that PLAINTIFFS and the other members of the CALIFORNIA CLASS were under
12 compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS
13 Members forfeited time worked by working without their time being accurately recorded and
14 without compensation at the applicable minimum wage and overtime wage rates. To the extent
15 that the time worked off the clock does not qualify for overtime premium payment,
16 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
17 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

18 16. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
19 other members of the CALIFORNIA CLASS with complete and accurate wage statements
20 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
21 Code § 226 provides that every employer shall furnish each of his or her employees with an
22 accurate itemized wage statement in writing showing, among other things, gross wages earned
23 and all applicable hourly rates in effect during the pay period and the corresponding amount of
24 time worked at each hourly rate. PLAINTIFFS and CALIFORNIA CLASS Members were paid
25 on an hourly basis. As such, the wage statements should reflect all applicable hourly rates
26 during the pay period and the total hours worked, and the applicable pay period in which the
27 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
28 DEFENDANT provided to PLAINTIFFS and other CALIFORNIA CLASS Members failed to

1 identify such information. More specifically, the wage statements failed to identify the accurate
2 total hours worked each pay period. When the hours shown on the wage statements were added
3 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
4 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT
5 failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
6 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
7 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements
8 which violated Cal. Lab. Code § 226.

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

13 [I]n addition to, and entirely independent and apart from, any other penalty provided in
14 this article, every person who fails to pay the wages of each employee as provided in
15 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
16 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.

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

20 19. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
21 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
22 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
23 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate of
24 pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS
25 Members at their base rates of pay.

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

1 of employment.

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

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

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

24 23. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
25 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
26 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence
27 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
28 2802, employers are required to indemnify employees for all expenses incurred in the course

1 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
2 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
3 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
4 directions of the employer, even though unlawful, unless the employee, at the time of obeying
5 the directions, believed them to be unlawful."

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

16 25. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
17 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage
18 Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due
19 to PLAINTIFFS. DEFENDANT did not have a policy or practice which provided timely off-
20 duty meal and rest breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for
21 PLAINTIFFS' missed meal and rest breaks. The nature of the work performed by the
22 PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS' duties
23 for the legally required off-duty meal periods. DEFENDANT also failed to pay PLAINTIFFS
24 all of their earned commissions due to them when they left employment with DEFENDANT in
25 September of 2021. As a result, DEFENDANT's failure to provide PLAINTIFFS with the
26 legally required meal periods is evidenced by DEFENDANT's business records. The amount
27 in controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.
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1 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
2 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
3 permits or suffers to permit this work.

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

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

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

17 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
18 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
19 deceptively having in place company policies, practices and procedures
20 that failed to record and pay PLAINTIFFS and the other members of the
21 CALIFORNIA CLASS for all time worked, including minimum wages
22 owed and overtime wages owed for work performed by these employees;
23 and,

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

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

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

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

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or,
- 9 2) Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
15 act on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS
17 as a whole in that DEFENDANT failed to pay all wages due to members
18 of the CALIFORNIA CLASS as required by law;
- 19 1) With respect to the First Cause of Action, the final relief on behalf
20 of the CALIFORNIA CLASS sought does not relate exclusively to
21 restitution because through this claim PLAINTIFFS seek
22 declaratory relief holding that the DEFENDANT's policy and
23 practices constitute unfair competition, along with declaratory
24 relief, injunctive relief, and incidental equitable relief as may be
25 necessary to prevent and remedy the conduct declared to constitute
26 unfair competition;
- 27 (c) Common questions of law and fact exist as to the members of the
28 CALIFORNIA CLASS, with respect to the practices and violations of

1 California law as listed above, and predominate over any question
2 affecting only individual CALIFORNIA CLASS Members, and a Class
3 Action is superior to other available methods for the fair and efficient
4 adjudication of the controversy, including consideration of:

- 5 1) The interests of the members of the CALIFORNIA CLASS in
6 individually controlling the prosecution or defense of separate
7 actions in that the substantial expense of individual actions will be
8 avoided to recover the relatively small amount of economic losses
9 sustained by the individual CALIFORNIA CLASS Members when
10 compared to the substantial expense and burden of individual
11 prosecution of this litigation;
- 12 2) Class certification will obviate the need for unduly duplicative
13 litigation that would create the risk of:
 - 14 A. Inconsistent or varying adjudications with respect to
15 individual members of the CALIFORNIA CLASS, which
16 would establish incompatible standards of conduct for the
17 DEFENDANT; and/or,
 - 18 B. Adjudications with respect to individual members of the
19 CALIFORNIA CLASS would as a practical matter be
20 dispositive of the interests of the other members not parties
21 to the adjudication or substantially impair or impede their
22 ability to protect their interests;
- 23 3) In the context of wage litigation because a substantial number of
24 individual CALIFORNIA CLASS Members will avoid asserting
25 their legal rights out of fear of retaliation by DEFENDANT, which
26 may adversely affect an individual's job with DEFENDANT or
27 with a subsequent employer, the Class Action is the only means to
28 assert their claims through a representative; and,

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

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

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

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

18 (c) The members of the CALIFORNIA CLASS are so numerous that it is
19 impractical to bring all members of the CALIFORNIA CLASS before the
20 Court;

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

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

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

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

18
19 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

22 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB-
24 CLASS for missed meal and rest breaks in violation of the California
25 Labor Code and California regulations and the applicable California Wage
26 Order;

27 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR SUB-CLASS with accurate

1 itemized wage statements;

2 (c) Whether DEFENDANT has engaged in unfair competition by the
3 above-listed conduct;

4 (d) The proper measure of damages and penalties owed to the members of the
5 CALIFORNIA LABOR SUB-CLASS; and,

6 (e) Whether DEFENDANT's conduct was willful.

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

9 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
10 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
11 CLASS all wages due for overtime worked, for which DEFENDANT is
12 liable pursuant to Cal. Lab. Code § 1194;

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

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

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

25 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
26 when an employee is discharged or quits from employment, the employer
27 must pay the employee all wages due without abatement, by failing to
28 tender full payment and/or restitution of wages owed or in the manner

1 required by California law to the members of the CALIFORNIA LABOR
2 SUB-CLASS who have terminated their employment; and,

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

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

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

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

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

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

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

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

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

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

- 8 1) The interests of the members of the CALIFORNIA LABOR SUB-
9 CLASS in individually controlling the prosecution or defense of
10 separate actions in that the substantial expense of individual
11 actions will be avoided to recover the relatively small amount of
12 economic losses sustained by the individual CALIFORNIA
13 LABOR SUB-CLASS Members when compared to the substantial
14 expense and burden of individual prosecution of this litigation;
15 2) Class certification will obviate the need for unduly duplicative
16 litigation that would create the risk of:

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

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

- 26 3) In the context of wage litigation because a substantial number of
27 individual CALIFORNIA LABOR SUB-CLASS Members will
28 avoid asserting their legal rights out of fear of retaliation by

1 DEFENDANT, which may adversely affect an individual's job
2 with DEFENDANT or with a subsequent employer, the Class
3 Action is the only means to assert their claims through a
4 representative; and,

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

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

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

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA LABOR SUB-CLASS;

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

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

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
12 ascertainable from the business records of DEFENDANT. The
13 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
14 CLASS Members who worked for DEFENDANT in California at any
15 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

20
21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

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

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

28 48. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.

1 Code § 17021.

2 49. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
3 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
4 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
5 competition as follows:

6 Any person who engages, has engaged, or proposes to engage in unfair
7 competition may be enjoined in any court of competent jurisdiction. The court
8 may make such orders or judgments, including the appointment of a receiver, as
9 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.

10 Cal. Bus. & Prof. Code § 17203.

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

19 51. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
20 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
21 unscrupulous or substantially injurious to employees, and were without valid justification or
22 utility for which this Court should issue equitable and injunctive relief pursuant to Section
23 17203 of the California Business & Professions Code, including restitution of wages wrongfully
24 withheld.

25 52. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
26 fraudulent in that DEFENDANT’s policy and practice failed to provide the legally mandated
27 meal and rest periods, the required amount of compensation for missed meal and rest periods
28 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse

1 al necessary business expenses incurred, and failed to provide Fair Labor Standards Act
2 overtime wages due for overtime worked as a result of failing to include non-discretionary
3 incentive compensation into their regular rates of pay for purposes of computing the proper
4 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.
5 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
6 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
7 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

24 57. By and through the unlawful and unfair business practices described herein,
25 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
26 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
27 commission wages for commission wages earned, and has deprived them of valuable rights and
28 benefits guaranteed by law and contract, all to the detriment of these employees and to the

benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

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

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

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1 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

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

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

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

74. 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 time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious 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.

75. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid 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 wage 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, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code § 510]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3
4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

9 92. 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 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
13 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
14 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
15 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR
16 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
17 duties for the legally required off-duty meal periods. As a result of their rigorous work
18 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from
19 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
20 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
21 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
22 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
23 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period
24 in some workdays in which these employees were required by DEFENDANT to work ten (10)
25 hours of work from time to time. As a result, PLAINTIFFS and other members of the
26 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
27 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

28 94. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

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

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

9
10 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

10
11 **SIXTH CAUSE OF ACTION**

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

13 **[Cal. Lab. Code § 226]**

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

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

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

- 21 (1) gross wages earned,
22 (2) total hours worked by the employee, except for any employee whose
23 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
25 Industrial Welfare Commission,
26 (3) the number of piecerate units earned and any applicable piece rate if the employee
27 is paid on a piece-rate basis,
28 (4) all deductions, provided that all deductions made on written orders of the
 employee may be aggregated and shown as one item,
 (5) net wages earned,
 (6) the inclusive dates of the period for which the employee is paid,
 (7) the name of the employee and his or her social security number, except that by
 January 1, 2008, only the last four digits of his or her social security number or an
 employee identification number other than a social security number may be shown on
 the itemized statement,

1 (8) the name and address of the legal entity that is the employer, and
2 (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.

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

23 103. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
24 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
25 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
26 expended calculating the correct wages for all missed meal and rest breaks and the amount
27 of employment taxes which were not properly paid to state and federal tax authorities.
28 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of

1 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
2 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
3 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
4 226, in an amount according to proof at the time of trial (but in no event more than four
5 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
6 CALIFORNIA LABOR SUB-CLASS herein).

7
8 **SEVENTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 2802]**

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

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

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

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

20 106. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
21 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
22 CLASS members for required expenses incurred in the discharge of their job duties for
23 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
24 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
25 limited to, costs related to using their personal cellular phones on behalf of and for the
26 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
27 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
28

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

11 107. PLAINTIFFS therefore demand reimbursement for expenditures or losses
12 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
13 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
14 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

15 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

24 As used in this article:

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

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

1 110. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer
2 discharges an employee, the wages earned and unpaid at the time of discharge are due and
3 payable immediately.”

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

5 If an employee not having a written contract for a definite period quits his
6 or her employment, his or her wages shall become due and payable not
7 later than 72 hours thereafter, unless the employee has given 72 hours
8 previous notice of his or her intention to quit, in which case the employee
9 is entitled to his or her wages at the time of quitting. Notwithstanding any
10 other provision of law, an employee who quits without providing a 72-
11 hour notice shall be entitled to receive payment by mail if he or she so
12 requests and designates a mailing address. The date of the mailing shall
13 constitute the date of payment for purposes of the requirement to provide
14 payment within 72 hours of the notice of quitting.

15 112. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR
16 SUB-CLASS Members’ employment contract.

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

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

24 114. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
25 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
26 owed as required by law.

27 115. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
28 the members of the CALIFORNIA INSIDE SALES SUB-CLASS who have not been fully
paid their commission wages due to them, PLAINTIFFS demand an accounting and
payment of all commission wages due, plus interest and statutory costs as allowed by law.

 116. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
the members of the CALIFORNIA LABOR SUB-CLASS whose employment has
terminated and who have not been fully paid their wages due to them, PLAINTIFFS demand
thirty days of pay as penalty for not paying all wages due at time of termination for all
employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS

1 PERIOD and demands an accounting and payment of all wages due, plus interest and
2 statutory costs as allowed by law.

3
4 **NINTH CAUSE OF ACTION**

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

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

7 **(By PLAINTIFFS and Against All Defendants)**

8 117. PLAINTIFFS reallege and incorporates by this reference, as though fully set
9 forth herein, the prior paragraphs of this Complaint.

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

20 119. PLAINTIFFS, and such persons that may be added from time to time who
21 satisfy the requirements and exhaust the administrative procedures under the Private
22 Attorney General Act, brings this Representative Action on behalf of the State of California
23 with respect to themselves and all individuals who are or previously were employed by
24 DEFENDANT in California and who were classified as non-exempt employees but
25 excluding employees who were employed as drivers ("AGGRIEVED EMPLOYEES")
26 during the time period of January 14, 2021 until a date as determined by the Court (the
27 "PAGA PERIOD").

28 120. On January 14, 2022, PLAINTIFFS gave written notice by electronic mail to

1 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
2 employer of the specific provisions of this code alleged to have been violated as required by
3 Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS to add these
4 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
5 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to
6 Section 2699 as the proxies of the State of California with respect to all AGGRIEVED
7 EMPLOYEES as herein defined.

8 121. The policies, acts and practices heretofore described were and are an unlawful
9 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
10 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
11 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
12 (d) failed to pay overtime and sick pay wages, (e) failed to reimburse employees for required
13 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
14 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7,
15 227.3, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
16 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
17 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS
18 hereby seek recovery of civil penalties as prescribed by the Labor Code Private Attorney
19 General Act of 2004 as the representatives of the State of California for the illegal conduct
20 perpetrated on PLAINTIFFS and the AGGRIEVED EMPLOYEES.

21 122. All of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
23 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations
24 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
25 2018 AJDAR 12157 (Certified for Publication 12/19/18).

27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
4 1197;
- 5 F) The amount of the expenses PLAINTIFFS and each member of the
6 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
7 plus interest, and costs of suit.; and,
- 8 G) The wages of all terminated employees in the CALIFORNIA LABOR
9 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
10 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 11 3. On behalf of the CALIFORNIA INSIDE SALES SUB-CLASS:
- 12 A) That the Court certify the Ninth Cause of Action asserted by the CALIFORNIA
13 INSIDE SALES SUB-CLASS as a class action pursuant to Cal. Code of Civ.
14 Proc. § 382;
- 15 B) Compensatory damages, according to proof at trial, including compensatory
16 damages for commission compensation due PLAINTIFFS and the other members
17 of the CALIFORNIA INSIDE SALES SUB-CLASS, during the applicable
18 CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;
- 19 4. On behalf of the State of California and with respect to all AGGRIEVED
20 EMPLOYEES:
- 21 A) Recovery of civil penalties as prescribed by the Labor Code Private
22 Attorneys General Act of 2004.f
- 23 5. On all claims:
- 24 A) An award of interest, including prejudgment interest at the legal rate;
- 25 B) Such other and further relief as the Court deems just and equitable; and,
- 26 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
27 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
28 and/or §2802.

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Dated: November 20, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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DEMAND FOR A JURY TRIAL

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

Dated: November 20, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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