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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

FRANCIS COQUILLETTE, an
individual, on behalf of himself and on
behalf of all persons similarly situated,
and on behalf of the State of California,
as a private attorney general,

Plaintiff,

vs.

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

Defendants.

Case No. 37-2022-00019868-CU-OE-CTL

**FIRST AMENDED CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246;
10. KNOWING FALSE REPRESENTATIONS IN VIOLATION OF CAL. LAB. CODE §§ 970; and
11. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Location Services, LLC (“DEFENDANT”) is a Limited Liability
7 Company that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT provides asset recovery services.

10 3. PLAINTIFF was employed by DEFENDANT in California from 2013 to
11 September of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
12 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
13 of minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
15 defined as all individuals who are or previously were employed by Defendant in the State of
16 California on a non-exempt basis (the “CALIFORNIA CLASS”) at any time during the period
17 beginning March 25, 2018 through November 25, 2023 (the “CALIFORNIA CLASS
18 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
19 Members is under five million dollars (\$5,000,000.00).

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

1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

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

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

20 21 **THE CONDUCT**

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

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

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

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

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

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

23 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
25 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
26 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
27 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
28 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,

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

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

1 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

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

4 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
5 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
6 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
7 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
8 underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base
9 rates of pay.

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

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

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

26 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
27 to collect or receive from an employee any part of wages theretofore paid by said employer to
28

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

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

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

24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for the legally required off-duty meal periods. DEFENDANT also failed to pay PLAINTIFF all of his earned monies due to him when he left employment with DEFENDANT in September of 2021. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business records. The amount in controversy for PLAINTIFF individually does 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 PLAINTIFF 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 PLAINTIFF 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. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as

1 all individuals who are or previously were employed by Defendant in the State of California on
2 a non-exempt basis(the "CALIFORNIA CLASS") at any time during the period beginning
3 March 25, 2018 through November 25, 2023 (the "CALIFORNIA CLASS PERIOD"). The
4 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
5 million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

19 (c) The claims of the representative PLAINTIFF are typical of the claims of
20 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
21 other members of the CALIFORNIA CLASS, was classified as a non-
22 exempt employee paid on an hourly basis who was subjected to the
23 DEFENDANT's deceptive practice and policy which failed to provide the
24 legally required meal and rest periods to the CALIFORNIA CLASS and
25 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
26 CLASS. PLAINTIFF sustained economic injury as a result of
27 DEFENDANT's employment practices. PLAINTIFF and the members of
28 the CALIFORNIA CLASS were and are similarly or identically harmed

1 by the same unlawful, deceptive and unfair misconduct engaged in by
2 DEFENDANT; and,

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

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

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

- 17 1) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA CLASS which would establish
19 incompatible standards of conduct for the parties opposing the
20 CALIFORNIA CLASS; and/or,
21 2) Adjudication with respect to individual members of the
22 CALIFORNIA CLASS which would as a practical matter be
23 dispositive of interests of the other members not party to the
24 adjudication or substantially impair or impede their ability to
25 protect their interests.

- 26 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
27 act on grounds generally applicable to the CALIFORNIA CLASS, making
28 appropriate class-wide relief with respect to the CALIFORNIA CLASS

1 as a whole in that DEFENDANT failed to pay all wages due to members
2 of the CALIFORNIA CLASS as required by law;

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

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

17 1) The interests of the members of the CALIFORNIA CLASS in
18 individually controlling the prosecution or defense of separate
19 actions in that the substantial expense of individual actions will be
20 avoided to recover the relatively small amount of economic losses
21 sustained by the individual CALIFORNIA CLASS Members when
22 compared to the substantial expense and burden of individual
23 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 CLASS, which
28 would establish incompatible standards of conduct for the

1 DEFENDANT; and/or,

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

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

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

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

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

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 CLASS because in the context of employment litigation a substantial
27 number of individual CALIFORNIA CLASS Members will avoid
28 asserting their rights individually out of fear of retaliation or adverse

1 impact on their employment;

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

5 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
6 able to obtain effective and economic legal redress unless the action is
7 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 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 CLASS for the injuries sustained;

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

19 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
20 the business records of DEFENDANT; and,

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

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

employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of 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 the State of California on a non-exempt basis (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning March 25, 2018 through November 25, 2023 (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). 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 PLAINTIFF 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.

38. 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. PLAINTIFF will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all

1 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

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

1 itemized statement in writing showing the corresponding correct amount
2 of wages earned by the employee;

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

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

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

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

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

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

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

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

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

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

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

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

1 matter be dispositive of interests of the other members not party to
2 the adjudication or substantially impair or impede their ability to
3 protect their interests.

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

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

- 18 1) The interests of the members of the CALIFORNIA LABOR SUB-
19 CLASS in individually controlling the prosecution or defense of
20 separate actions in that the substantial expense of individual
21 actions will be avoided to recover the relatively small amount of
22 economic losses sustained by the individual CALIFORNIA
23 LABOR SUB-CLASS Members when compared to the substantial
24 expense and burden of individual prosecution of this litigation;
- 25 2) Class certification will obviate the need for unduly duplicative
26 litigation that would create the risk of:

27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA LABOR SUB-

CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

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

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

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

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

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

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS

Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

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

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

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

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

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

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

members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

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

1 49. By the conduct alleged herein, DEFENDANT's practices were unlawful and
2 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
3 unscrupulous or substantially injurious to employees, and were without valid justification or
4 utility for which this Court should issue equitable and injunctive relief pursuant to Section
5 17203 of the California Business & Professions Code, including restitution of wages wrongfully
6 withheld.

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

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

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

26 53. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
27 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
28 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay

1 for each workday in which a second off-duty meal period was not timely provided for each ten
2 (10) hours of work.

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

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

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

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

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

26 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.

1 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5
6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Minimum Wages**

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

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

10 **and Against All Defendants)**

11 60. PLAINTIFF, 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 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
16 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
17 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
18 Members.

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

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

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

26 65. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
28 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

28 71. DEFENDANT knew or should have known that PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
2 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
3 to not pay employees for their labor as a matter of company policy, practice and procedure, and
4 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

25
26 **THIRD CAUSE OF ACTION**

27 **For Failure To Pay Overtime Compensation**

28 **[Cal. Lab. Code § 510]**

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

74. PLAINTIFF, 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.

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

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

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

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

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

80. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that failed to accurately record overtime worked by

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
2 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
4 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
5 workweek.

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

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

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

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

26 85. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
27 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
28 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,

1 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
3 failed to accurately record and pay as evidenced by DEFENDANT's business records and
4 witnessed by employees.

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

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

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

25 89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
27 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
28 by the California Labor Code and/or other applicable statutes. To the extent minimum and/or

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

8
9 **FOURTH CAUSE OF ACTION**

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

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

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

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

17 91. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
18 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
19 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
20 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
21 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
22 duties for the legally required off-duty meal periods. As a result of their rigorous work
23 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
24 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
25 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
27 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
28 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period

1 in some workdays in which these employees were required by DEFENDANT to work ten (10)
2 hours of work from time to time. As a result, PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
4 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

14
15 **FIFTH CAUSE OF ACTION**

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

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

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

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

23 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
24 time to time required to work in excess of four (4) hours without being provided ten (10) minute
25 rest periods. Further, these employees from time to time were denied their first rest periods of
26 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
27 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
28 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some

1 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
2 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
3 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
5 periods by DEFENDANT and DEFENDANT's managers.

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

11 97. As a proximate result of the aforementioned violations, PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
13 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
14 suit.

15 **SIXTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 226]**

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

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

23 99. Cal. Labor Code § 226 provides that an employer must furnish employees with
24 an "accurate itemized" statement in writing showing:

- 25 (1) gross wages earned,
26 (2) total hours worked by the employee, except for any employee whose
27 compensation is solely based on a salary and who is exempt from payment of
28 overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission,
(3) the number of piece-rate units earned and any applicable piece rate if the employee
is paid on a piece-rate basis,

1 (4) all deductions, provided that all deductions made on written orders of the
2 employee may be aggregated and shown as one item,
3 (5) net wages earned,
4 (6) the inclusive dates of the period for which the employee is paid,
5 (7) the name of the employee and his or her social security number, except that by
6 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,
7 (8) the name and address of the legal entity that is the employer, and
8 (9) all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate by the employee.

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

101. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.

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

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

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

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

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the 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.

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

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

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

20 **EIGHTH CAUSE OF ACTION**

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

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

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

25 106. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
26 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
27 paragraphs of this Complaint.
28

1 107. Cal. Lab. Code § 200 provides, in relevant part, that:

2 As used in this article:

3 (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.

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

6 108. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer
7 discharges an employee, the wages earned and unpaid at the time of discharge are due and
8 payable immediately."

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

10 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
11 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
12 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-
13 hour notice shall be entitled to receive payment by mail if he or she so
requests and designates a mailing address. The date of the mailing shall
14 constitute the date of payment for purposes of the requirement to provide
payment within 72 hours of the notice of quitting.

15 110. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
16 SUB-CLASS Members' employment contract.

17 111. 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
employee who is discharged or who quits, the wages of the employee shall
20 continue as a penalty from the due date thereof at the same rate until paid
or until an action therefor is commenced; but the wages shall not continue
21 for more than 30 days.

22 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
23 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
24 owed as required by law.

25 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
26 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
27 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
28 of pay as penalty for not paying all wages due at time of termination for all employees who

1 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
2 demands an accounting and payment of all wages due, plus interest and statutory costs as
3 allowed by law.

4 **NINTH CAUSE OF ACTION**

5 **For Failure to Pay Sick Pay Wages**

6 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

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

8 **and Against All Defendants)**

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

12 115. Cal Lab. Code § 233 provides that an employer must permit an employee to
13 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
14 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
15 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
16 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
17 right to sick pay wages, which an employer must calculate and compensate based on one of
18 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
19 same manner as the regular rate of pay for the workweek in which the employee uses paid
20 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
21 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
22 total wages, not including overtime premium pay, by the employee's total hours worked in
23 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
24 233, employees may sue to recover underpaid sick pay wages as damages.

25 116. As a matter of policy and practice, DEFENDANT pays sick pay wages to
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
27 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
28 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn

1 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
2 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
3 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
4 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
5 employee's total wages, not including overtime premium pay, by the employee's total hours
6 worked in the full pay periods of the prior 90 days of employment. As a result,
7 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
8 CALIFORNIA LABOR-SUB-CLASS.

9 117. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
10 during each calendar month and are to be paid no later than the payday for the next regular
11 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
12 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
13 no later than the payday for the next regular payroll period after accrued sick leave is used as
14 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
15 employee, wages earned and unpaid at the time of discharge are due and payable
16 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
17 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
18 the employee has given 72-hour notice of his or her intention to quit, in which case the
19 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
20 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
21 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
22 wages of the employee shall continue as a penalty from the due date, and at the same rate
23 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
24 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
25 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
26 sue to recover applicable penalties.

27 118. As alleged herein and as a matter of policy and practice, DEFENDANT
28 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other

1 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
2 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
3 among other Labor Code provisions. PLAINTIFF is informed and believes that
4 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
5 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
6 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
7 include those benefits to which an employee is entitled as a part of his or her compensation,
8 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
9 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
10 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
11 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
12 penalties.

13 119. Such a pattern, practice, and uniform administration of corporate policy is
14 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
15 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
16 attorney's fees, and costs of suit.

17 **TENTH CAUSE OF ACTION**

18 **Knowing False Representations Violation of Labor Code §§ 970**

19 **[Cal. Lab. Code §§ 970]**

20 **(By PLAINTIFF Against All Defendants)**

21 120. PLAINTIFF realleges and incorporates by reference, as though fully set forth
22 herein, the prior paragraphs of this Complaint.

23 121. Cal. Lab. Code § 970 provides, in relevant part, that:

24 Prohibits employees from influencing or persuading an employee to
25 relocate from one place to another for work, by means of knowingly false
representations regarding:

- 26 a) The kind, character, or existence of such work;
- 27 b) The length of time such work will last, or the compensation therefor;
- 28 c) The sanitary or housing conditions relating to or surrounding the work;

1 d) The existence or nonexistence of any strike, lockout, or other labor dispute
2 affecting it and pending between the proposed employer and the persons then or last
3 engaged in the performance of the labor for which the employee is sought.

4 122. PLAINTIFF worked for DEFENDANT at DEFENDANT's Poway, CA
5 location. DEFENDANT closed the Poway, CA location and then assigned PLAINTIFF
6 to DEFENDANT's Chula Vista, CA location. DEFENDANT closed the Chula Vista,
7 CA location and finally assigned PLAINTIFF to DEFENDANT's Fairfield, CA
8 location. Each time PLAINTIFF had to move to a different city to work for
9 DEFENDANT. When PLAINTIFF was asked to move to the Fairfield, CA location,
10 PLAINTIFF asked DEFENDANT if DEFENDANT would be closing that location soon
11 as PLAINTIFF did not want to move for a third time for DEFENDANT and would have
12 sought out other employment opportunities. DEFENDANT's Area Manager, AJ
13 McGlaughlin told PLAINTIFF "No, it won't happen [the Fairfield location being
14 closed]". Two weeks later DEFENDANT closed the Fairfield location and
15 PLAINTIFF was forced to look for work elsewhere.

16
17 123. Therefore, as provided by Cal Lab. Code § 970, PLAINTIFF demands the
18 appropriate damages stemming from, including but not limited to, moving expenses,
19 rejecting other job offers, and now currently being unable to find comparable work as
20 determined at trial, plus interest and statutory costs as allowed by law.

21
22 **ELEVENTH CAUSE OF ACTION**

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

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

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

26 124. PLAINTIFF realleges and incorporates by this reference, as though fully set
27 forth herein, the prior paragraphs of this Complaint.

28 125. PAGA is a mechanism by which the State of California itself can enforce state

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

10 126. PLAINTIFF, and such persons that may be added from time to time who
11 satisfy the requirements and exhaust the administrative procedures under the Private
12 Attorney General Act, brings this Representative Action on behalf of the State of California
13 with respect to himself and all individuals who were employed by Defendant in California
14 and classified as a non-exempt employee ("AGGRIEVED EMPLOYEES") during the time
15 period of July 13, 2021 through November 25, 2023 (the "PAGA PERIOD").

16 127. On January 14, 2022, PLAINTIFF gave written notice by electronic mail to
17 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
18 employer of the specific provisions of this code alleged to have been violated as required by
19 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
20 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
21 now commence a representative civil action under PAGA pursuant to Section 2699 as the
22 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
23 defined.

24 128. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
26 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
27 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 provide wages when due, all in violation
2 of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*,
3 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
4 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
5 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
6 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
7 Labor Code Private Attorney General Act of 2004 as the representative of the State of
8 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
9 EMPLOYEES.

10
11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
14 severally, as follows:

15 1. On behalf of the CALIFORNIA CLASS:

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

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

27
28 ¹Plaintiff 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, Eighth
2 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
3 CLASS as a class 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 PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
7 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
8 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 PLAINTIFF and each member of the CALIFORNIA
19 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
20 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 3. 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 4. On all claims:

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DEMAND FOR A JURY TRIAL

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

Dated: December 18, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Yesenia Silva, am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On December 18, 2023, I served the document(s) described as:

1. FIRST AMENDED CONSOLIDATED CLASS AND REPRESENTATIVE ACTION COMPLAINT

X **(BY ELECTRONIC SERVICE):** I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

Jeff Michalowski
QUARLES & BRADY LLP
101 West Broadway, Ninth Floor
San Diego, California 92101
Tel: 619-237-5200
Fax: 619-615-0700
Email: jeff.michalowski@quarles.com

X **(State):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 18, 2023 at San Diego, California.

/s/ Yesenia Silva

Yesenia Silva