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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

09/19/2025

Clerk of the Court

BY: JUDITH NUNEZ

Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO**

FELIX GUNAWAN, TAJE FLEMING, TOMA
STAVREV, SAIF AHMED, IRWANDIE TIO, and
XAVIER BROWN, individuals, on behalf of
themselves and on behalf of all persons similarly
situated and on behalf of the State of California, as a
private attorney General,

Plaintiffs,

vs.

TRANSDEV ALTERNATIVE SERVICES, INC., a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-22-599234

**SECOND AMENDED 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 and 1198;
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 §§ 2800 and 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. Failure to Keep Requisite Payroll Records in Violation of Cal. Lab. Code § 1174(d); and
11. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for Violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 351, 510, 512, 558(a)(1)(2), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(a)-(B), and the Applicable Wage Order(s)

Demand for a Jury Trial

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1 Plaintiffs Felix Gunawan, Taje Fleming, Toma Stavrev, Saif Ahmed, Irwandie Tio, and Xavier
2 Brown (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated current
3 and former employees, allege on information and belief, except for their own acts and knowledge which
4 are based on personal knowledge, the following.

5 **THE PARTIES**

6 1. Transdev Alternative Services, Inc. (“DEFENDANT”) is a corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial business in the state
8 of California. DEFENDANT is a leader in employing individuals to operate autonomous vehicles.

9 2. Plaintiff Gunawan was employed by DEFENDANT from March of 2020 to December
10 of 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
11 basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime
12 wages due for all time worked.

13 3. Plaintiff Fleming was employed by DEFENDANT from August of 2021 December of
14 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
15 basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime
16 wages due for all time worked.

17 4. Plaintiff Stavrev was employed by DEFENDANT from August of 2021 to
18 January 16, 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
19 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and
20 overtime wages due for all time worked.

21 5. Plaintiff Ahmed was employed by DEFENDANT from March of 2020 to January
22 16, 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
23 basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime
24 wages due for all time worked.

25 6. Plaintiff Tio was employed by DEFENDANT from February of 2021 to March of 2022
26 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis,
27 and entitled to the legally required meal and rest periods and payment of minimum and overtime wages
28 due for all time worked.

1 7. Plaintiff Brown was employed by DEFENDANT from September of 2021 to September
2 of 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
3 basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime
4 wages due for all time worked.

5 8. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
6 defined as all individuals who are or previously were employed by DEFENDANT who were classified
7 as non-exempt in the State of California (the "CALIFORNIA CLASS") from November 21, 2019 to
8 the earlier of preliminary approval or January 24, 2025 (the "CALIFORNIA CLASS PERIOD"). The
9 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
10 dollars (\$5,000,000.00).

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

21 10. The true names and capacities, whether individual, corporate, subsidiary, partnership,
22 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
23 PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal. Civ.
24 Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names
25 and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are
26 informed and believe, and based upon that information and belief allege, that the Defendants named
27 in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one
28

1 or more of the events and happenings that proximately caused the injuries and damages hereinafter
2 alleged.

3 11. The agents, servants and/or employees of the Defendants and each of them acting on
4 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
5 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein
6 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of
7 each Defendant are legally attributable to the other Defendants and all Defendants are jointly and
8 severally liable to PLAINTIFFS and the other members of the CALIFORNIA CLASS, for the loss
9 sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

10 11 THE CONDUCT

12 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
13 required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including all
15 the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFFS and
16 the CALIFORNIA CLASS Members to work without paying them for all the time they were under
17 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFFS to work while clocked
18 out during what was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from
19 time to time interrupted by work assignments while clocked out for what should have been
20 PLAINTIFFS' off-duty meal break. DEFENDANT also engaged in the practice of requiring
21 PLAINTIFFS and the CALIFORNIA CLASS Members to perform work off the clock in that
22 DEFENDANT, as a condition of employment, required these employees to submit to mandatory
23 COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday.
24 Further, PLAINTIFFS and the CALIFORNIA CLASS Members from time to time were not paid
25 wages for all time worked, including overtime wages, such that in the aggregate employees were
26 underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time
27 worked by its employees. As a result, PLAINTIFFS and the CALIFORNIA CLASS Members
28 forfeited minimum wage and overtime compensation by from time to time working without their

1 time being accurately recorded and without compensation at the applicable minimum wage and
2 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and the
3 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
4 records.

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

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

24 15. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA
25 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and
26 were not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA
27 CLASS Members were required from time to time to perform work as ordered by DEFENDANT for
28 more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT

1 from time to time failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a
2 second off-duty meal period for some workdays in which these employees were required by
3 DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged in the practice of
4 rounding the meal period times to avoid paying penalties to PLAINTIFFS and other CALIFORNIA
5 CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeit
6 meal breaks without additional compensation and in accordance with DEFENDANT's corporate
7 policy and practice.

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

27 17. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
28 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of

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

13 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
14 other members of the CALIFORNIA CLASS with complete and accurate wage statements which
15 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
16 provides that every employer shall furnish each of his or her employees with an accurate itemized
17 wage statement in writing showing, among other things, gross wages earned and all applicable
18 hourly rates in effect during the pay period and the corresponding amount of time worked at each
19 hourly rate. PLAINTIFF and CALIFORNIA CLASS Members were paid on an hourly basis. As
20 such, the wage statements should reflect all applicable hourly rates during the pay period and the
21 total hours worked, and the applicable pay period in which the wages were earned pursuant to
22 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
23 PLAINTIFF and other CALIFORNIA CLASS Members failed to identify such information. More
24 specifically, the wage statements failed to identify the accurate total hours worked each pay period.
25 When the hours shown on the wage statements were added up, they did not equal the actual total
26 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). DEFENDANT also
27 violated Cal. Lab. Code Section 226 (a)(9) by failing to list the correct hours worked and rates of
28 pay for the "Retro" payment. Aside, from the violations listed above in this paragraph,

1 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
2 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time
3 provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements
4 which violated Cal. Lab. Code § 226.

5 19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
6 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
7 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code
8 § 210 provides:

9 [I]n addition to, and entirely independent and apart from, any other penalty provided in this
10 article, every person who fails to pay the wages of each employee as provided in Sections. . . .204. .
11 .shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
12 (\$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.

13 20. DEFENDANT from time to time failed to pay PLAINTIFFS and members of the
14 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
15 period in accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly”
16 regular wage payments.

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

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

27 23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
28 regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned non-

1 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
2 was paid, it was paid at the base rate of pay for PLAINTIFFS and members of the CALIFORNIA
3 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
4 Section 246.

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

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

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

1 employer, even though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful."

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

13 28. In violation of the applicable sections of the California Labor Code and the
14 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
15 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and
16 systematically failed to provide PLAINTIFFS and the other Aggrieved Employees suitable seating
17 when the nature of these employees' work reasonably permitted sitting.

18 29. DEFENDANT knew or should have known that PLAINTIFFS and other Aggrieved
19 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with
20 the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did
21 not allow them to sit when it did not interfere with the performance of their duties.

22 30. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved Employees,
23 DEFENDANT violated California Labor Code Section 1198 and California Code of Regulations,
24 Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order 4-2001, Section 14 by failing
25 to provide suitable seats. PLAINTIFFS seek penalties on behalf of PLAINTIFFS and other
26 Aggrieved Employees as provided herein. Providing suitable seating is the DEFENDANT's burden.
27 As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
28

1 DEFENDANT violated the California Labor Code and regulations promulgated thereunder as herein
2 alleged.

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE CALIFORNIA CLASS**

24 34. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
25 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
26 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
27 individuals who are or previously were employed by DEFENDANT who were classified as non-
28

1 exempt in the State of California (the “CALIFORNIA CLASS”) from November 21, 2019 to the
2 earlier of preliminary approval or January 24, 2025 (the “CALIFORNIA CLASS PERIOD”). The
3 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
4 million dollars (\$5,000,000.00).

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

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

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

23 38. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

25 39. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law
26 by:

- 27 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
28 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or

1 deceptively having in place company policies, practices and procedures that
2 failed to record and pay PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS for all time worked, including minimum wages owed
4 and overtime wages owed for work performed by these employees; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be

dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (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 CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

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

THE CALIFORNIA LABOR SUB-CLASS

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

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

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

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

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

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

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

- 17 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS
18 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due
19 for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab.
20 Code § 1194;
21 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
22 accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR
23 SUB-CLASS the correct minimum wage pay for which DEFENDANT is
24 liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
25 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
28 meal breaks and the legally required off-duty rest breaks;

- 1 (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
2 an employee is discharged or quits from employment, the employer must pay
3 the employee all wages due without abatement, by failing to tender full
4 payment and/or restitution of wages owed or in the manner required by
5 California law to the members of the CALIFORNIA LABOR SUB-CLASS
6 who have terminated their employment;
- 7 (e) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
8 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
9 itemized statement in writing showing the corresponding correct amount of
10 wages earned by the employee; and,
- 11 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
12 the CALIFORNIA LABOR SUB-CLASS members with necessary expenses
13 incurred in the discharge of their job duties.

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

- 16 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
17 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
18 Members is impracticable and the disposition of their claims as a class will
19 benefit the parties and the Court;
- 20 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
21 are raised in this Complaint are common to the CALIFORNIA LABOR SUB-
22 CLASS and will apply to every member of the CALIFORNIA LABOR SUB-
23 CLASS;
- 24 (c) The claims of the representative PLAINTIFFS are typical of the claims of
25 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS,
26 like all the other members of the CALIFORNIA LABOR SUB-CLASS, were
27 non-exempt employees paid on an hourly basis who were subjected to the
28 DEFENDANT's practice and policy which failed to pay the correct amount

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

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

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

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

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

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

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

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

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

24 A. Inconsistent or varying adjudications with respect to
25 individual members of the CALIFORNIA LABOR SUB-
26 CLASS, which would establish incompatible standards of
27 conduct for the DEFENDANT; and/or,
28

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

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

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

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

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

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

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

2 **For Unlawful Business Practices**

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

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

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

14 59. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
15 and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS to be underpaid during their employment with
17 DEFENDANT. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
18 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide all
19 legally required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS
20 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

21 66. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
24 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful
27 and unfair business practices.
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1 74. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
3 by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT
4 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
5 of the California Labor Code, the Industrial Welfare Commission requirements and other applicable
6 laws and regulations.

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

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

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

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

27 79. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all

1 time worked and provide them with the requisite compensation, DEFENDANT acted and continues
2 to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of
3 the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights,
4 or the consequences to them, and with the despicable intent of depriving them of their property and
5 legal rights, and otherwise causing them injury in order to increase company profits at the expense
6 of these employees.

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

18 19 **THIRD CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

21 **[Cal. Lab. Code § 510]**

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

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

26 82. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
28 and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these

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

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

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

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

13 86. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
14 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
15 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including
16 overtime work.

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

24 88. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
26 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in
27 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
28 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws

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

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

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

15 91. DEFENDANT failed to accurately pay the PLAINTIFFS and the other members of
16 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
17 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
18 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
19 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed to
20 accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
21 employees.

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

27 93. DEFENDANT knew or should have known that PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

As used in this article:

(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.

(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 demanding payment.

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

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

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

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

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

If an employer willfully fails to pay, without abatement or reduction, in 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 continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

118. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law. Additionally, at all times during the term of PLAINTIFFS' employment with DEFENDANT, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members earned and accrued vested vacation and holiday time on the date of their termination pursuant to DEFENDANT's uniform vacation policies and applicable California law. The amount of vacation pay PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS Members earned and accumulated is evidenced by DEFENDANT's business records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay such wages at the regular rate of pay and more specifically the final rate of pay that included all non-discretionary incentive compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of including all of PLAINTIFFS' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary incentive compensation into the vacation wage payment calculations. DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which PLAINTIFFS and other CALIFORNIA LABOR CLASS Members would be paid vacation upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful practice, policy and procedure to deny paying the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time, DEFENDANT failed to pay the PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all vested vacation time as wages due upon employment termination, in violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of including all of

1 PLAINTIFFS' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
2 compensation into the waiting time penalty calculations. This failure by DEFENDANT is believed
3 to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation
4 for earned, accrued and vested vacation and holiday time, as well as the corresponding waiting time
5 penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive practice to
6 the detriment of the PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS .
7 DEFENDANT's uniform practice and policy of failing to pay the LABOR SUB-CLASS Members
8 for all vested vacation and holiday time accumulated at employment termination violated and
9 continues to violate Section 227.3 of the California Labor Code.

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

16 **NINTH CAUSE OF ACTION**

17 **For Failure to Pay Sick Pay Wages**

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

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

20 **and Against All Defendants)**

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

24 121. Cal Lab. Code § 233 provides that an employer must permit an employee to
25 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate
26 of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use
27 of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is
28 used as paid sick time, an employee has a vested right to sick pay wages, which an employer must

1 calculate and compensate based on one of two calculations: (i) “Paid sick time for nonexempt
2 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
3 which the employee uses paid sick time, whether or not the employee actually works overtime in
4 that workweek,” or (ii) “Paid sick time for nonexempt employees shall be calculated by dividing the
5 employee’s total wages, not including overtime premium pay, by the employee’s total hours worked
6 in the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218 and 233,
7 employees may sue to recover underpaid sick pay wages as damages.

8 122. As a matter of policy and practice, DEFENDANT pays sick pay wages to
9 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the incorrect
10 rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS
11 regularly use accrued sick leave in the workweeks in which they also earn non-hourly remuneration.
12 As a matter of policy and practice, DEFENDANT pays sick pay wages to PLAINTIFFS and the
13 other members of the CALIFORNIA LABOR-SUB-CLASS at the base hourly pay, as opposed to
14 the regular rate of pay, which would consider all non-hourly remuneration in addition to base hourly
15 wages, or the rate resulting from dividing the employee’s total wages, not including overtime
16 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of
17 employment. As a result, DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other
18 members of the CALIFORNIA LABOR-SUB-CLASS.

19 123. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
20 during each calendar month and are to be paid no later than the payday for the next regular payroll
21 period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon
22 use of accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for
23 the next regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal.
24 Lab. Code § 201 provides that if an employer discharges an employee, wages earned and unpaid at
25 the time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an
26 employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his
27 or her employment, unless the employee has given 72-hour notice of his or her intention to quit, in
28 which case the employee is entitled to his or her wages at the time of quitting. The Labor Code

1 penalizes untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
2 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the wages of
3 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the
4 wages shall not continue for more than thirty (30) days. Likewise, Cal. Lab. Code § 210 provides
5 penalties for violations of Cal. Lab. Code § 204 and untimely payments during employment. Under
6 Cal. Lab. Code §§ 203, 210 and 218, employees may sue to recover applicable penalties.

7 124. As alleged herein and as a matter of policy and practice, DEFENDANT
8 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
9 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As
10 a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor
11 Code provisions. PLAINTIFFS are informed and believe that DEFENDANT was advised by
12 skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to
13 PLAINTIFFS' allegations, especially since the California Supreme Court has explained that
14 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is entitled
15 as a part of his or her compensation, including money, room, board, clothing, vacation pay, *and sick*
16 *pay.*" *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added).
17 Because DEFENDANT willfully fails to timely pay PLAINTIFFS and the other members of the
18 CALIFORNIA LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to
19 applicable penalties.

20 125. Such a pattern, practice, and uniform administration of corporate policy is
21 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-
22 CLASS to underpaid sick pay wages, including interest thereon, applicable penalties, attorney's
23 fees, and costs of suit.

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1 131. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
2 herein, the prior paragraphs of this Complaint.

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

12 133. PLAINTIFFS, and such persons that may be added from time to time who satisfy the
13 requirements and exhaust the administrative procedures under the Private Attorney General Act,
14 bring this Representative Action on behalf of the State of California with respect to themselves and
15 all individuals who are or previously were employed by DEFENDANT in California and who were
16 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of
17 January 3, 2021 until a date as determined by the Court (the "PAGA PERIOD").

18 134. On January 3, 2022, Plaintiffs Felix Gunawan, Taje Fleming, Toma Stavrev, and Saif
19 Ahmed gave written notice by electronic mail to the Labor and Workforce Development Agency
20 (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged
21 to have been violated as required by Labor Code § 2699.3. On April 20, 2022, Plaintiff Irwandie Tio
22 gave written notice by electronic mail to the Agency and by certified mail to the employer of the
23 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
24 On March 23, 2023, Plaintiff Xavier Brown gave written notice by electronic mail to the Agency
25 and by certified mail to the employer of the specific provisions of this code alleged to have been
26 violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS to add
27 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
28 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to Section

1 2699 as the proxies of the State of California with respect to all AGGRIEVED EMPLOYEES as
2 herein defined.

3 135. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and
6 provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay
7 overtime and sick pay wages, (e) failed to reimburse employees for required expenses, and (f) failed
8 to provide wages when due, all in violation of the applicable Labor Code sections listed in Labor
9 Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 351, 510, 512, 558(a)(1)(2),
10 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, California Code of Regulations, Title 8, Section
11 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil
12 penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of only civil penalties as
13 prescribed by the Labor Code Private Attorney General Act of 2004 as the representatives of the
14 State of California for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED
15 EMPLOYEES.

16 136. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
17 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFFS
18 during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that affected the
19 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504
20 (2018).

21
22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally,
24 as follows:

25 1. On behalf of the CALIFORNIA CLASS:
26
27 _____

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

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

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

- 12 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth,
13 and Tenth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
14 class action pursuant to Cal. Code of Civ. Proc. § 382;
- 15 B) Compensatory damages, according to proof at trial, including compensatory damages
16 for minimum and overtime compensation due PLAINTIFFS and the other members of
17 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR
18 SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 19 C) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
20 applicable IWC Wage Order;
- 21 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
22 a violation occurs and one hundred dollars (\$100) per each member of the
23 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not
24 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs
25 for violation of Cal. Lab. Code § 226;
- 26 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
27 and,
28

1 F) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as
2 a penalty from the due date thereof at the same rate until paid or until an action therefore
3 is commenced, in accordance with Cal. Lab. Code § 203.

4 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

5 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
6 Act of 2004; and,

7 B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but
8 not limited to, pursuant to Labor Code §2699.

9 4. On all claims:

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

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

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

14
15 Dated: September 19, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
16
17

18 By: /s/ Jeffrey Herman
19 Norman B. Blumenthal
20 Nicholas J. De Blouw
21 Jeffrey Herman
22 *Attorneys for Plaintiffs*
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DEMAND FOR A JURY TRIAL

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

Dated: September 19, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Jeffrey Herman
Norman B. Blumenthal
Nicholas J. De Blouw
Jeffrey Herman
Attorneys for Plaintiffs