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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF MONTERREY**

14 ANGELA GARCIA, an individual, on behalf of herself
15 and on behalf of all persons similarly situated,

16 Plaintiff,

17 vs.

18 SUNDERSTORM INC., a Corporation;
19 SUNDERSTORM BAY LLC, a Limited Liability
20 Corporation; and DOES 1 through 50, inclusive,

21 Defendants.

Case No. 22CV001827

**FIRST 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;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; and
10. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, §§ 11040, SUBDIVISION 5(A)-(B), AND 11070(14)[FAILURE TO PROVIDE SEATING]-(15) [TEMPERATURE], AND THE APPLICABLE WAGE ORDER(s), INCLUDING INDUSTRIAL WAGE ORDER 7(A)(3).

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Sunderstorm Inc. (“DEFENDANT”) is a corporation that at all relevant times
7 mentioned herein conducted and continues to conduct substantial business in the state of California.

8 2. Defendant Sunderstorm Bay LLC (“DEFENDANT”) is a limited liability company that
9 at all relevant times mentioned herein conducted and continues to conduct substantial business in the
10 state of California.

11 3. Defendants Sunderstorm Inc. and Sunderstorm Bay LLC were the joint employers of
12 PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work for
13 respectively, and are therefore jointly responsible as employers for the conduct alleged herein, and are
14 therefore collectively referred to herein as “DEFENDANT.”

15 4. DEFENDANT produces and manufacturers cannabis products.

16 5. PLAINTIFF was employed by DEFENDANT in California from December of 2018 until
17 October of 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
18 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and
19 overtime wages due for all time worked.

20 6. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined
21 as all individuals who are or previously were employed by Sunderstorm Inc. and Sunderstorm Bay LLC,
22 in the State of California (the “CALIFORNIA CLASS”), from June 29, 2018 to the earlier of the date
23 of an order approving Plaintiff’s motion for preliminary approval, or July 1, 2023 (the “CALIFORNIA
24 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
25 Members is under five million dollars (\$5,000,000.00).

26 7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS
27 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
28 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to

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

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

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

23 **THE CONDUCT**

24 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
26 the time during which an employee is subject to the control of an employer, including all the time the
27 employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA
28 CLASS Members to work without paying them for all the time they are under DEFENDANT's control.

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

17 11. State and federal law provides that employees must be paid overtime and meal and rest
18 break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
19 CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied to
20 specific elements of an employee’s performance.

21 12. The second component of PLAINTIFF’s and other CALIFORNIA CLASS Members’
22 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF and other
23 CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT. The
24 non-discretionary incentive program provided all employees paid on an hourly basis with incentive
25 compensation when the employees met the various performance goals set by DEFENDANT. However,
26 when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to
27 PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
28 compensation as part of the employees’ “regular rate of pay” for purposes of calculating overtime pay

1 and meal and rest break premium pay. Management and supervisors described the incentive program
2 to potential and new employees as part of the compensation package. As a matter of law, the incentive
3 compensation received by PLAINTIFF and other CALIFORNIA CLASS Members must be included
4 in the “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime
5 compensation and meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS
6 Members by DEFENDANT.

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

18 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA
19 CLASS Members are also required from time to time to work in excess of four (4) hours without being
20 provided ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
21 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a
22 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
23 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes
24 for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
25 CALIFORNIA CLASS Members are also not provided with one hour wages in lieu thereof.
26 Additionally, the applicable California Wage Order requires employers to provide employees with off-
27 duty rest periods, which the California Supreme Court defined as time during which an employee is
28 relieved from all work related duties and free from employer control. In so doing, the Court held that

1 the requirement under California law that employers authorize and permit all employees to take rest
2 period means that employers must relieve employees of all duties and relinquish control over how
3 employees spend their time which includes control over the locations where employees may take their
4 rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five
5 minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and other
6 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's
7 rule which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
8 premises during their rest period.

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

23 16. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
24 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
25 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
26 every employer shall furnish each of his or her employees with an accurate itemized wage statement in
27 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during
28 the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and

1 CALIFORNIA CLASS Members were paid on an hourly basis. As such, the wage statements should
2 reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable
3 pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The
4 wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS Members
5 failed to identify such information. More specifically, the wage statements failed to identify the accurate
6 total 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). Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8) by failing to list the correct
9 name of the legal entity that employs PLAINTIFF and other CALIFORNIA CLASS Members. Aside,
10 from the violations listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFF an
11 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
12 result, DEFENDANT from time to time provides PLAINTIFF and the other members of the
13 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

18 [I]n addition to, and entirely independent and apart from, any other penalty
19 provided in this article, every person who fails to pay the wages of each employee as
20 provided in Sections . . . 204. . . shall be subject to a civil penalty as follows: (1) For
any initial violation, one hundred dollars (\$100) for each failure to pay each
employee; (2) For each subsequent violation, or any willful or intentional violation,
two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of
the amount unlawfully withheld.

21 18. DEFENDANT from time to time fails to pay PLAINTIFF and members of the
22 CALIFORNIA LABOR SUB-CLASS Members within eleven (11) days of the close of the payroll
23 period in accordance with Cal. Lab. Code § 204(a).

24 19. DEFENDANT underpays sick pay wages to PLAINTIFF and other CALIFORNIA
25 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
26 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
27 remuneration, including but not limited to, incentives, shift differential pay, and bonuses. Rather than
28 pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to PLAINTIFF and other

1 CALIFORNIA CLASS Members at their base rates of pay.

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

5 21. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
6 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
7 discretionary incentive wages, including but not limited to, incentives, shift differential pay, and
8 bonuses, which increased their regular rate of pay. However, when sick pay was paid, it was paid at the
9 base rate of pay for PLAINTIFF and members of the CALIFORNIA CLASS, as opposed to the correct,
10 higher regular rate of pay, as required under Cal. Lab. Code Section 246.

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

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

26 24. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
27 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred
28 by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging

1 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
2 required to indemnify employees for all expenses incurred in the course and scope of their employment.
3 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
4 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
5 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless
6 the employee, at the time of obeying the directions, believed them to be unlawful."

7 25. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
8 Members as a business expense, are required by DEFENDANT to use their own personal cellular
9 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not
10 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal
11 cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA
12 CLASS Members are required by DEFENDANT to use their personal cellular phones. As a result, in
13 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
14 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited
15 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of
16 DEFENDANT. Further, PLAINTIFF and the CALIFORNIA CLASS Members were only reimbursed
17 for a small percentage of their mileage they drove for DEFENDANT's benefit and also were not
18 reimbursed for home office expenses in connection with working out of their home for DEFENDANT's
19 benefit.

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

1 27. Further, PLAINTIFFS allege that the work space in DEFENDANT's California
2 locations generally similar in their layout and design and that there is ample space behind each
3 workstation to allow for the presence and use of a stool or seat by DEFENDANT's non-exempt
4 employees during the performance of their work duties. DEFENDANT's non-exempt
5 employees working at DEFENDANT's locations spend a very substantial portion, and, in many
6 workdays, the vast majority of their working time behind these workstations. The nature of
7 their position can reasonably be accomplished while using a seat/stool.

8 28. California Labor Code § 1198 states that "the standard conditions of labor fixed
9 by the commission shall be . . . the standard conditions of labor for employees. The employment
10 of any employee . . . under conditions of labor prohibited by the order is unlawful." As required
11 by Industrial Welfare Commission Wage Order 7-2001 (hereafter "Wage Order") § 15, "[t]he
12 temperature maintained in each work area shall provide reasonable comfort consistent with
13 industry-wide standards for the nature of the process and the work performed" and "If excessive
14 heat or humidity is created by the work process, the employer shall take all feasible means to
15 reduce such excessive heat or humidity to a degree providing reasonable comfort" and, "A
16 temperature of not less than 68 degrees shall be maintained in the toilet rooms, resting rooms,
17 and change rooms during hours of use."

18 29. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
19 Members were scheduled to work areas and were subjected to unreasonably hot temperatures
20 during their shifts. During the hot summer months, despite the complaints from PLAINTIFFS
21 and other CALIFORNIA CLASS Members, DEFENDANT failed to install a sufficient air
22 conditioning system in the warehouses or provide any other form of relief. Moreover, during
23 the cold winter months, PLAINTIFFS and other CALIFORNIA CLASS Members were
24 scheduled to work in unreasonably frigid conditions where the temperature would consistently
25 fall below 60° and sometimes 40° making for extremely uncomfortable working conditions.
26 During the winter months, DEFENDANT did not maintain a temperature of not less than 68°
27 in the toilet rooms, resting rooms, and change rooms during hours of use by PLAINTIFFS and
28 other CALIFORNIA CLASS Members. Thus, PLAINTIFFS and other CALIFORNIA CLASS

1 Members, were required by DEFENDANT to suffer under these unreasonable and
2 uncomfortable conditions.

3 30. DEFENDANT's thus failed to maintain a temperature in each work area that
4 provides reasonable comfort consistent with industry-wide standards for the nature of the
5 process and the work performed, in compliance with California Code of Regulations, Title 8,
6 Section 1 1070(15)(Temperature).

7 **JURISDICTION AND VENUE**

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

12 32. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
13 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i)
14 currently maintains and at all relevant times maintained offices and facilities in this County and/or
15 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
16 in this County against members of the CALIFORNIA CLASS.

17 **THE CALIFORNIA CLASS**

18 33. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
20 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
21 are or previously were employed by Sunderstorm Inc. and Sunderstorm Bay LLC in the state of
22 California, (the "CALIFORNIA CLASS") from June 29, 2018 to the earlier of the date of an order
23 approving Plaintiff's motion for preliminary approval, or July 1, 2023 (the "CALIFORNIA CLASS
24 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is
25 under five million dollars (\$5,000,000.00).

26 34. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
27 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

28 35. DEFENDANT, as a matter of company policy, practice and procedure, and in violation

1 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and
2 the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice
3 whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF and other
4 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work,
5 required employees to perform this work and permits or suffers to permit this work.

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

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

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

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

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

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

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

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

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

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

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

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

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

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in

1 that the substantial expense of individual actions will be avoided to
2 recover the relatively small amount of economic losses sustained by the
3 individual CALIFORNIA CLASS Members when compared to the
4 substantial expense and burden of individual prosecution of this
5 litigation;

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

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

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

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

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

28 41. This Court should permit this action to be maintained as a Class Action pursuant to Cal.

1 Code of Civ. Proc. § 382 because:

- 2 (a) The questions of law and fact common to the CALIFORNIA CLASS
3 predominate over any question affecting only individual CALIFORNIA CLASS
4 Members because the DEFENDANT's employment practices are applied with
5 respect to the CALIFORNIA CLASS;
- 6 (b) A Class Action is superior to any other available method for the fair and
7 efficient adjudication of the claims of the members of the CALIFORNIA
8 CLASS because in the context of employment litigation a substantial number
9 of individual CALIFORNIA CLASS Members will avoid asserting their rights
10 individually out of fear of retaliation or adverse impact on their employment;
- 11 (c) The members of the CALIFORNIA CLASS are so numerous that it is
12 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 13 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able
14 to obtain effective and economic legal redress unless the action is maintained as
15 a Class Action;
- 16 (e) There is a community of interest in obtaining appropriate legal and equitable
17 relief for the acts of unfair competition, statutory violations and other
18 improprieties, and in obtaining adequate compensation for the damages and
19 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
20 CLASS;
- 21 (f) There is a community of interest in ensuring that the combined assets of
22 DEFENDANT are sufficient to adequately compensate the members of the
23 CALIFORNIA CLASS for the injuries sustained;
- 24 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
25 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
26 respect to the CALIFORNIA CLASS as a whole;
- 27 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
28 business records of DEFENDANT; and,

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

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

10 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
2 adjusted accordingly.

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

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

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

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

24 48. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
25 California law by:

- 26 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and
27 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
28 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code

1 § 1194;

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

6 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
7 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
8 statement in writing showing the corresponding correct amount of wages earned
9 by the employee;

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

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

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

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

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

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

5 (c) The claims of the representative PLAINTIFF are typical of the claims of each
6 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
7 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
8 employee paid on an hourly basis who was subjected to the DEFENDANT's
9 practice and policy which failed to pay the correct amount of wages due to the
10 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury
11 as a result of DEFENDANT's employment practices. PLAINTIFF and the
12 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
13 identically harmed by the same unlawful, deceptive, and unfair misconduct
14 engaged in by DEFENDANT; and,

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

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

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

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- (c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 - 2) Class certification will obviate the need for unduly duplicative litigation

that would create the risk of:

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

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

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

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

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

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

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA

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

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

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

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

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

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

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

27 (i) Class treatment provides manageable judicial treatment calculated to bring a
28 efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA LABOR SUB-CLASS.

3 **FIRST CAUSE OF ACTION**

4 **For Unlawful Business Practices**

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

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

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

9 52. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §
10 17021.

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

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

18 Cal. Bus. & Prof. Code § 17203.

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

26 55. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in
27 that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
28 substantially injurious to employees, and were without valid justification or utility for which this Court

1 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
2 Professions Code, including restitution of wages wrongfully withheld.

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

13 57. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
14 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members
15 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

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

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

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

28 61. By and through the unlawful and unfair business practices described herein,

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

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

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

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

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

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

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

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

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

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

26 78. In performing the acts and practices herein alleged in violation of California labor laws,
27 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
28 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act

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

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

16 17 **THIRD CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

19 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

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

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

28 89. Cal. Lab. Code § 515 sets out various categories of employees who are exempt

1 from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining
4 agreement that would preclude the causes of action contained herein this Complaint. Rather,
5 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-CLASS based
6 on DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the State of
7 California.

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

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

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

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

28 94. In performing the acts and practices herein alleged in violation of California labor laws,

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

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

19 **FOURTH CAUSE OF ACTION**

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

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

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

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

26 97. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed
27 to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
28 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature

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

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

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

21 22 **FIFTH CAUSE OF ACTION**

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

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

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

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

101. PLAINTIFF 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. PLAINTIFF 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, PLAINTIFF 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 PLAINTIFF 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, PLAINTIFF 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 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

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 fails to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period. When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8) by failing to list the correct name of the legal entity that employs PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members. Aside, from the violations listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provides PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

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

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

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

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

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

110. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their

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

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

17 **EIGHTH CAUSE OF ACTION**

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

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

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

21 **and Against All Defendants)**

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

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

27 As used in this article:

28 (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 PLAINTIFF’s 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 PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

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

NINTH CAUSE OF ACTION

For Failure to Pay Sick Pay Wages

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

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

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

1 of this Complaint.

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

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

25 123. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
26 during each calendar month and are to be paid no later than the payday for the next regular payroll
27 period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon
28 use of accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for

1 the next regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal.
2 Lab. Code § 201 provides that if an employer discharges an employee, wages earned and unpaid at
3 the time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an
4 employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his
5 or her employment, unless the employee has given 72-hour notice of his or her intention to quit, in
6 which case the employee is entitled to his or her wages at the time of quitting. The Labor Code
7 penalizes untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
8 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the wages of
9 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the
10 wages shall not continue for more than thirty (30) days. Likewise, Cal. Lab. Code § 210 provides
11 penalties for violations of Cal. Lab. Code § 204 and untimely payments during employment. Under
12 Cal. Lab. Code §§ 203, 210 and 218, employees may sue to recover applicable penalties.

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

26 125. Such a pattern, practice, and uniform administration of corporate policy is
27 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-
28 CLASS to underpaid sick pay wages, including interest thereon, applicable penalties, attorney's

1 fees, and costs of suit.

2 **TENTH CAUSE OF ACTION**

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

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

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

6 126. PLAINTIFF, realleges and incorporates by this reference, as though fully set forth herein,
7 the prior paragraphs of this Complaint.

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

17 128. PLAINTIFF, and such persons that may be added from time to time who satisfy the
18 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this
19 Representative Action on behalf of the State of California with respect to herself and all individuals who are
20 or previously were employed by DEFENDANT in California, including any employees staffed with
21 DEFENDANT by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
22 during the time period of February 21, 2021 to the earlier of the date of an order approving Plaintiff's
23 motion for preliminary approval, or July 1, 2023 (the "PAGA PERIOD").

24 129. On February 21, 2022, PLAINTIFF, gave written notice by electronic mail to the Labor and
25 Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory
27 waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant
28 to Section 2699.3, PLAINTIFF, may now commence a representative civil action under PAGA pursuant to

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

3 130. The policies, acts and practices heretofore described were and are an unlawful business act
4 or practice because DEFENDANT (a) failed to provide PLAINTIFF, and the AGGRIEVED EMPLOYEES
5 accurate itemized wage statements, (b) failed to properly record and provide legally required meal and rest
6 periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick pay wages, and (e)
7 failed to reimburse employees for required expenses, all in violation of the applicable Labor Code sections
8 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 510, 512,
9 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
10 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1070(14) [Failure to Provide
11 Seating] and California Code of Regulations, Title 8, Section 1070(15) [Temperature] and the applicable
12 Wage Order(s), including Industrial Wage Order 7(A)(3), and thereby gives rise to civil penalties as a result
13 of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor
14 Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal
15 conduct perpetrated on PLAINTIFF, and the AGGRIEVED EMPLOYEES.

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

20 21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
23 as follows:

24 1. On behalf of the CALIFORNIA CLASS:

25 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS

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

as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

1 G) 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
6 Attorneys General Act of 2004; and,

7 B) An award of attorneys' fees and cost of suit, as allowable under the
8 law, including, but 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.

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15 Dated: June 27, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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17 By: /s/ Nicholas J. De Blouw

18 Nicholas J. De Blouw
19 Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: June 27, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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