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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 DANIEL MATTHEWS, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

13 Plaintiffs,

14 v.

15 LUSK QUALITY MACHINE
16 PRODUCTS, a California Corporation;
17 and DOES 1-50, Inclusive,

18 Defendant(s).

Case No. **22STCV15409**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 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) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.; and

DEMAND FOR JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant LUSK QUALITY MACHINE PRODUCTS (“DEFENDANT”
7 or “DEFENDANTS”) is a California Corporation and at all relevant times mentioned
8 herein conducted and continues to conduct substantial and regular business in California.

9 2. DEFENDANT is a manufacturer of CNC turning and screw machining
10 custom parts.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-
12 exempt employee entitled to minimum wages, accurate wage statements, overtime pay
13 and meal and rest periods from June 3, 2019 to February 9, 2021. PLAINTIFF was at all
14 times relevant mentioned herein classified by DEFENDANT as a non-exempt employee
15 paid in whole or in part on an hourly basis and entitled to the legally required meal and
16 rest periods and payment of minimum and overtime wages due for all the time worked.
17 DEFENDANT as a non-exempt employee is also entitled to accurate itemized wage
18 statements.

19 4. PLAINTIFF brings this Class Action on behalf of himself and a California
20 class, defined as all individuals who are or previously were employed by DEFENDANT
21 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at
22 any time between during the period beginning four (4) years prior to the filing of the
23 complaint and ending on the date as determined by the Court (the “CALIFORNIA
24 CLASS PERIOD”). The amount in controversy for the aggregate claim of
25 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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1 **THE CONDUCT**

2 8. Pursuant to the Industrial Welfare Commission Wage Orders,
3 DEFENDANT is required to pay PLAINTIFF and the CALIFORNIA CLASS Members
4 for all their time worked, meaning the time during which an employee is subject to the
5 control of an employer, including all the time the employee is suffered or permitted to
6 work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA
7 CLASS Members to work without paying them for all the time they were under
8 DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work
9 while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break, as
10 well as before his shift started and after his shift ended. DEFENDANT required
11 PLAINTIFF and the CALIFORNIA CLASS Members to work off the clock without
12 paying them for all the time they performed duties while on their meal break, specifically
13 by failing to provide enough labor hours to accomplish all the job tasks that
14 DEFENDANT expected PLAINTIFF and the CALIFORNIA CLASS Members to
15 complete on a daily and/or weekly basis. From time to time, PLAINTIFF was also often
16 interrupted by work assignments during his breaks. Indeed there were many days where
17 PLAINTIFF did not even receive a partial meal break. PLAINTIFF and other
18 CALIFORNIA CLASS Members are not paid for their work time putting on their work
19 gear because they are not paid until they are ready to work prior to their shift.
20 DEFENDANT failed to pay PLAINTIFF and CALIFORNIA CLASS Members for this
21 donning and doffing time on the mandatory protective gear. Additionally, from time to
22 time, DEFENDANT engages in the practice of requiring PLAINTIFF and
23 CALIFORNIA CLASS Members to perform work off the clock that DEFENDANT, as a
24 condition of employment, requires these employees to wait in line and submit to
25 mandatory temperature check for COVID-19 screening prior to clocking into
26 DEFENDANT'S timekeeping system for the workday. Additionally, prior to clocking in
27 for a shift, PLAINTIFF and other CALIFORNIA CLASS Members are required to put
28 on their work uniforms and protective gear, including but not limited to, oil resistant sole

1 shoes, uniform, safety glasses, safety gloves, facial covering mask, and ear plugs.
2 Finally, PLAINTIFF and other members of the CALIFORNIA CLASS from time to time
3 were not paid wages for all the time worked, including overtime wages, such that in the
4 aggregate employees were underpaid wages as a result of DEFENDANT’S pattern and
5 practice of unevenly rounding time worked by its employees. DEFENDANTS also
6 underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS
7 MEMBERS by failing to pay such wages at the regular rate of pay. Specifically,
8 PLAINTIFF and other non-exempt employees regularly earn non-discretionary
9 remuneration, including but not limited to, incentives, shift differential pay and bonuses.
10 Rather, than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
11 PLAINTIFF and other CALIFORNIA CLASS MEMBERS at their base rates of pay. As
12 a result, PLAINTIFF and other California CLASS Members forfeit minimum wage,
13 overtime wage compensation, and off-duty meal breaks by working without their time
14 being correctly recorded and without compensation at the applicable rates. As a result,
15 the PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited
16 minimum wage and overtime compensation by working without their time being
17 accurately recorded and without compensation at the applicable minimum wage and
18 overtime rates. DEFENDANT’S uniform policy and practice not to pay PLAINTIFF and
19 other CALIFORNIA CLASS Members for all time worked is evidenced by
20 DEFENDANT’S business records.

21 9. State and Federal law provides that employees must be paid overtime at
22 one-and-one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA
23 CLASS Members are compensated at an hourly rate plus incentive pay that is tied to
24 specific elements of an employee’s performance.

25 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have
26 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
27 other CALIFORNIA CLASS Members for the actual time these employees worked each
28 day, including overtime hours. As a result DEFENDANT was able to and did in fact

1 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping
2 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
3 paying these employees the applicable overtime compensation for overtime worked and
4 to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
5 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by
6 working without their time being accurately recorded and without compensation at the
7 applicable overtime rates.

8 11. The mutability of the timekeeping system also allowed DEFENDANT to
9 alter employee time records by recording fictitious thirty (30) minute meal breaks in
10 DEFENDANT's timekeeping system so as to create the appearance that PLAINTIFF and
11 other CALIFORNIA CLASS Members clocked out for a thirty (30) minute meal break
12 when in fact the employees were not at all times provided an off-duty meal break. This
13 practice is a direct result of DEFENDANTS' uniform policy and practice of denying
14 employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
15 compensate them for missed meal breaks

16 12. As a result of their rigorous work schedules, PLAINTIFF and other
17 CALIFORNIA CLASS Members were also from time to time unable to take off duty
18 meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
19 CALIFORNIA CLASS Members were required to perform work as ordered by
20 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
21 meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA
22 CLASS Members with a second off-duty meal period each workday in which these
23 employees were required by DEFENDANT to work ten (10) hours of work. From time to
24 time, when a meal break was provided, PLAINTIFF was required to remain on
25 DEFENDANT's premises, on-call and on-duty, and was interrupted with work.
26 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
27 breaks without additional compensation and in accordance with DEFENDANT's strict
28 corporate policy and practice

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

25 14. When PLAINTIFF and other CALIFORNIA CLASS Members were not
26 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANT also
27 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
28 complete and accurate wage statements which failed to show, among other things, the

1 time worked, including, work performed in excess of eight (8) hours in a workday and/or
2 forty (40) hours in any workweek, and the correct penalty payments or missed meal and
3 rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his
4 or her employees with an accurate itemized wage statement in writing showing, among
5 other things, gross wages earned and all applicable hourly rates in effect during the pay
6 period and the corresponding amount of time worked at each hourly rate. Aside, from the
7 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
8 itemized wage statement that lists all the requirements under California Labor Code 226
9 *et seq.*, As a result, from time to time DEFENDANT provided PLAINTIFF and the other
10 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
11 Code § 226.

12 15. By reason of this uniform conduct applicable to PLAINTIFF and all
13 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition
14 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
15 *et seq.* (the “UCL”), by engaging in a company-wide policy and procedure which failed to
16 accurately calculate and record the correct time and overtime for the time worked by
17 PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
18 employees’ time is the DEFENDANT’s burden. As a result of DEFENDANT’s
19 intentional disregard of the obligation to meet this burden, DEFENDANT failed to
20 properly calculate and/or pay all required compensation for work performed by the
21 members of the CALIFORNIA CLASS and violated the California Labor Code and
22 regulations promulgated thereunder as herein alleged.

23 16. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission (“IWC”) Wage Order,
25 DEFENDANT as a matter of company policy, practice and procedure, intentionally and
26 knowingly failed to compensate PLAINTIFF and the other members of the
27 CALIFORNIA CLASS for missed meal and rest periods. This uniform policy and
28 practice of DEFENDANT is intended to purposefully avoid the payment for all time

1 worked as required by California law which allows DEFENDANT to illegally profit and
2 gain an unfair advantage over competitors who complied with the law. To the extent
3 equitable tolling operates to toll claims by the CALIFORNIA CLASS against
4 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

5 17. By reason of this uniform conduct applicable to PLAINTIFF and all
6 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition
7 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
8 *et seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
9 accurately calculate and record all missed meal and rest periods by PLAINTIFF and
10 other CALIFORNIA CLASS Members. The proper recording of these employees’
11 missed meal and rest breaks is the DEFENDANT’s burden. As a result of
12 DEFENDANT’s intentional disregard of the obligation to meet this burden,
13 DEFENDANT failed to properly calculate and/or pay all required compensation for work
14 performed by the members of the CALIFORNIA CLASS and violated the California
15 Labor Code and regulations promulgated thereunder as herein alleged.

16 18. Specifically as to PLAINTIFF’s pay, PLAINTIFF was from time to time
17 unable to take off duty meal and rest breaks and was not fully relieved of duty for his
18 meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT
19 for more than five (5) hours during a shift without receiving an off-duty meal break.
20 Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
21 each workday in which he was required by DEFENDANT to work ten (10) hours of
22 work. PLAINTIFF therefore forfeited meal and rest breaks without additional
23 compensation and in accordance with DEFENDANT’s strict policy and practice. To
24 date, DEFENDANT have not fully paid PLAINTIFF the minimum wage and overtime
25 compensation still owed to his or any penalty wages owed to them under Cal. Lab. Code
26 § 203.

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

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1 Order requirements, and the applicable provisions of California law, intentionally,
2 knowingly, and willfully, engages in practice whereby DEFENDANT fails to record all
3 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
4 even though DEFENDANT enjoys the benefit of this work, requires employees to perform
5 this work and permits or suffers to permit this work.

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

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

- 17 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
18 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
19 company policies, practices and procedures that failed to pay all wages due
20 the CALIFORNIA CLASS for all minimum wages and overtime worked.
- 21 b. Committing an act of unfair competition in violation of the California Unfair
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
23 provide mandatory meal and/or rest breaks to PLAINTIFF and the
24 CALIFORNIA CLASS members;
- 25 c. Committing an act of unfair competition in violation of the California Unfair
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating
27 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
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1 CALIFORNIA CLASS Members with necessary expenses incurred in the
2 discharge of their job duties.

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

- 5 a. The persons who comprise the CALIFORNIA CLASS are so numerous that
6 the joinder of all such persons is impracticable and the disposition of their
7 claims as a class will benefit the parties and the Court;
- 8 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
9 that are raised in this Complaint are common to the CALIFORNIA CLASS
10 will apply uniformly to every member of the CALIFORNIA CLASS;
- 11 c. The claims of the representative PLAINTIFF are typical of the claims of
12 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other
13 members of the CALIFORNIA CLASS, was subjected to the uniform
14 employment practices of DEFENDANT and was a non-exempt employee
15 paid on an hourly basis and paid additional non-discretionary incentive
16 wages who was subjected to the DEFENDANT's practice and policy which
17 failed to pay the correct rate of overtime wages due to the CALIFORNIA
18 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
19 systematically under pays overtime compensation to the CALIFORNIA
20 CLASS. PLAINTIFF sustained economic injury as a result of
21 DEFENDANT's employment practices. PLAINTIFF and the members of
22 the CALIFORNIA CLASS were and are similarly or identically harmed by
23 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
24 engaged in by DEFENDANT; and
- 25 d. The representative PLAINTIFF will fairly and adequately represent and
26 protect the interest of the CALIFORNIA CLASS, and has retained counsel
27 who are competent and experienced in Class Action litigation. There are no
28 material conflicts between the claims of the representative PLAINTIFF and

1 the members of the CALIFORNIA CLASS that would make class
2 certification inappropriate. Counsel for the CALIFORNIA CLASS will
3 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

7 a. Without class certification and determination of declaratory, injunctive,
8 statutory and other legal questions within the class format, prosecution of
9 separate actions by individual members of the CALIFORNIA CLASS will
10 create the risk of:

11 i. Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA CLASS which would establish
13 incompatible standards of conduct for the parties opposing the
14 CALIFORNIA CLASS; and/or;

15 ii. Adjudication with respect to individual members of the
16 CALIFORNIA CLASS which would as a practical matter be
17 dispositive of interests of the other members not party to the
18 adjudication or substantially impair or impede their ability to protect
19 their interests.

20 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act
21 on grounds generally applicable to the CALIFORNIA CLASS, making
22 appropriate class-wide relief with respect to the CALIFORNIA CLASS as a
23 whole in that DEFENDANT uniformly failed to pay all wages due, including
24 the correct overtime rate, for all time worked by the members of the
25 CALIFORNIA CLASS as required by law;

26 i. With respect to the First Cause of Action, the final relief on behalf of
27 the CALIFORNIA CLASS sought does not relate exclusively to
28 restitution because through this claim PLAINTIFF seek declaratory

1 relief holding that the DEFENDANT's policy and practices constitute
2 unfair competition, along with declaratory relief, injunctive relief,
3 and incidental equitable relief as may be necessary to prevent and
4 remedy the conduct declared to constitute unfair competition;

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

11 i. The interests of the members of the CALIFORNIA CLASS in
12 individually controlling the prosecution or defense of separate actions
13 in that the substantial expense of individual actions will be avoided
14 to recover the relatively small amount of economic losses sustained
15 by the individual CALIFORNIA CLASS Members when compared
16 to the substantial expense and burden of individual prosecution of this
17 litigation;

18 ii. Class certification will obviate the need for unduly duplicative
19 litigation that would create the risk of:

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

24 2. Adjudications with respect to individual members of the
25 CALIFORNIA CLASS would as a practical matter be
26 dispositive of the interests of the other members not parties to
27 the adjudication or substantially impair or impede their ability
28 to protect their interests;

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

12 29. The Court should permit this action to be maintained as a Class Action
13 pursuant to Cal. Code of Civ. Proc. § 382 because:

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

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

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THE CALIFORNIA LABOR SUB-CLASS

31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning 4 years before the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

32. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly pay for all time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work. DEFENDANT have uniformly denied these CALIFORNIA LABOR SUB-CLASS Members minimum and overtime wages at the correct amount to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 5 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
6 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
7 violation of the California Labor Code and California regulations and the
8 applicable California Wage Order;
- 9 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
10 entitled to overtime compensation for overtime worked under the overtime
11 pay requirements of California law;
- 12 c. Whether DEFENDANT failed to provide PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS with legally required
14 uninterrupted thirty (30) minute meal breaks and rest periods;
- 15 d. Whether DEFENDANT failed to provide PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS with accurate
17 itemized wage statements;
- 18 e. Whether DEFENDANT have engaged in unfair competition by the above-
19 listed conduct;
- 20 f. The proper measure of damages and penalties owed to the members of the
21 CALIFORNIA LABOR SUB-CLASS; and
- 22 g. Whether DEFENDANT's conduct was willful.

23 36. DEFENDANT, as a matter of company policy, practice and procedure,
24 failed to accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed
25 to provide accurate records of the time worked by these employees. All of the
26 CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-
27 exempt employees who were paid on an hourly basis by DEFENDANT according to
28 uniform and systematic company procedures as alleged herein above. This business

1 practice was uniformly applied to each and every member of the CALIFORNIA LABOR
2 SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-
3 wide basis.

4 37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
5 CLASS under California law by:

- 6 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
7 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
8 SUB-CLASS the correct minimum wage pay for which DEFENDANT is
9 liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 10 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
11 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
12 the correct overtime pay for which DEFENDANT are liable pursuant to Cal.
13 Lab. Code § 1194 & § 1198;
- 14 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
15 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
16 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
17 the legally required rest breaks;
- 18 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
19 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
20 itemized statement in writing showing time worked at by the employee;
- 21 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
22 an employee is discharged or quits from employment, the employer must
23 pay the employee all wages due without abatement, by failing to tender full
24 payment and/or restitution of wages owed or in the manner required by
25 California law to the members of the CALIFORNIA LABOR SUB-CLASS
26 who have terminated their employment.

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

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

6 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
7 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
8 Members is impracticable and the disposition of their claims as a class will
9 benefit the parties and the Court;

10 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
11 that are raised in this Complaint are common to the CALIFORNIA LABOR
12 SUB-CLASS and will apply uniformly to every member of the
13 CALIFORNIA LABOR SUB-CLASS;

14 c. The claims of the representative PLAINTIFF are typical of the claims of
15 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
16 like all the other members of the CALIFORNIA LABORSUB-CLASS, was
17 a non-exempt employee paid on an hourly basis and paid additional non-
18 discretionary incentive wages who was subjected to the DEFENDANT's
19 practice and policy which failed to pay the correct rate of overtime wages
20 due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked.
21 PLAINTIFF sustained economic injury as a result of DEFENDANT's
22 employment practices. PLAINTIFF and the members of the CALIFORNIA
23 LABOR SUB-CLASS were and are similarly or identically harmed by the
24 same unlawful, deceptive, unfair and pervasive pattern of misconduct
25 engaged in by DEFENDANT; and

26 d. The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
28 retained counsel who are competent and experienced in Class Action

1 litigation. There are no material conflicts between the claims of the
2 representative PLAINTIFF and the members of the CALIFORNIA LABOR
3 SUB-CLASS that would make class certification inappropriate. Counsel for
4 the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims
5 of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

- 1 c. Common questions of law and fact predominate as to the members of the
2 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
3 violations of California Law as listed above, and predominate over any
4 question affecting only individual CALIFORNIA LABOR SUB-CLASS
5 Members, and a Class Action is superior to other available methods for the
6 fair and efficient adjudication of the controversy, including consideration of:
- 7 i. The interests of the members of the CALIFORNIA LABOR SUB-
8 CLASS in individually controlling the prosecution or defense of
9 separate actions in that the substantial expense of individual actions
10 will be avoided to recover the relatively small amount of economic
11 losses sustained by the individual CALIFORNIA LABOR SUB-
12 CLASS Members when compared to the substantial expense and
13 burden of individual prosecution of this litigation;
- 14 ii. Class certification will obviate the need for unduly duplicative
15 litigation that would create the risk of:
- 16 1. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA LABOR SUB-
18 CLASS, which would establish incompatible standards of
19 conduct for the DEFENDANTS; and/or,
- 20 2. Adjudications with respect to individual members of the
21 CALIFORNIA LABOR SUB-CLASS would as a practical
22 matter be dispositive of the interests of the other members not
23 parties to the adjudication or substantially impair or impede
24 their ability to protect their interests;
- 25 iii. In the context of wage litigation because a substantial number of
26 individual CALIFORNIA LABOR SUB-CLASS Members will
27 avoid asserting their legal rights out of fear of retaliation by
28 DEFENDANT which may adversely affect an individual's job with

1 DEFENDANT or with a subsequent employer, the Class Action is the
2 only means to assert their claims through a representative; and,

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

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

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

injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

42. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof. Code § 17021.

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

5 Any person who engages, has engaged, or proposes to engage in unfair competition
6 may be enjoined in any court of competent jurisdiction. The court may make such
7 orders or judgments, including the appointment of a receiver, as may be necessary
8 to prevent the use or employment by any person of any practice which constitutes
9 unfair competition, as defined in this chapter, or as may be necessary to restore to
10 any person in interest any money or property, real or personal, which may have
11 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
12 17203).

13 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
14 engage in a business practice which violates California law, including but not limited to,
15 the applicable Wage Order(s), the California Code of Regulations and the California Labor
16 Code including Sections 201, 202, 203, 204, 226(a), 210, 226.7, 510, 512, 558, 1194, 1197
17 & 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable
18 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
19 remedy the conduct held to constitute unfair competition, including restitution of wages
20 wrongfully withheld.

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

27 46. By the conduct alleged herein, DEFENDANT’s practices were deceptive
28 and fraudulent in that DEFENDANT’s uniform policy and practice failed to pay
PLAINTIFF, and other members of the CALIFORNIA CLASS, minimum wages, wages
due for overtime worked, and failed to provide the required amount of overtime

1 compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
2 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which
3 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
4 § 17203, including restitution of wages wrongfully withheld.

5 47. By the conduct alleged herein, DEFENDANT's practices were also
6 unlawful, unfair and deceptive in that DEFENDANT's employment practices caused
7 PLAINTIFF and the other members of the CALIFORNIA CLASS to be underpaid during
8 their employment with DEFENDANT.

9 48. By the conduct alleged herein, DEFENDANT's practices were also unfair
10 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to
11 provide all legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
12 CLASS members as required by Cal. Lab. Code §§226.7 and 512.

13 49. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
14 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-
15 duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
16 hour of pay for each workday in which a second off-duty meal period was not timely
17 provided for each ten (10) hours of work.

18 50. PLAINTIFF further demands on behalf of himself and on behalf of each
19 CALIFORNIA CLASS member and CALIFORNIA LABOR SUB-CLASS, one (1) hour
20 of pay for each workday in which an off duty rest period rest period was not timely
21 provided as required by law.

22 51. By and through the unlawful and unfair business practices described herein,
23 DEFENDANT have obtained valuable property, money and services from PLAINTIFF
24 and the other members of the CALIFORNIA CLASS, including earned wages for all time
25 worked, and has deprived them of valuable rights and benefits guaranteed by law and
26 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as
27 to allow DEFENDANT to unfairly compete against competitors who comply with the law.
28

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

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

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

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

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**FAILURE TO PAY MINIMUM WAGES
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)
(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against
ALL Defendants)**

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

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

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

61. DEFENDANT maintains a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

62. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate

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

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

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

13 65. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
15 worked than they were entitled to, constituting a failure to pay all earned wages.
16 DEFENDANT fails to accurately pay the PLAINTIFF and members of the CALIFORNIA
17 LABOR SUB-CLASS the wages for the time they work in accordance with 1197 &
18 1197.1, even though the PLAINTIFF and the other members of the CALIFORNIA
19 LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in fact
20 work, off the clock time as to which DEFENDANT fails to accurately record and pay as
21 evidence by DEFENDANT's business records and witnessed by employees.

22 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD DEFENDANT
23 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
24 Members to work without paying them for all the time they were under DEFENDANT'S
25 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
26 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for the time
27 worked that they were entitled to, constituting a failure to pay all earned wages.

28 67. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

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

5 68. DEFENDANT knew or should have known that PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
7 time worked. DEFENDANTS systematically elected, either through intentional
8 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
9 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
10 systematic scheme by refusing to pay PLAINTIFF and the other members of the
11 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

1 CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and
2 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
3 Members are entitled to seek and recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME COMPENSATION**

6 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

7 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**
8 **ALL Defendants)**

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

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

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

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

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

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

5 77. DEFENDANT's uniform pattern of unlawful wage and hour practices
6 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as
7 a whole, as a result of implementing a uniform policy and practice that failed to accurately
8 record overtime worked by PLAINTIFF and the other members of the CALIFORNIA
9 LABOR SUB-CLASS, and denied accurate compensation to PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the
11 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a
12 workday, and/or forty (40) hours in any workweek.

13 78. In committing these violations of the California Labor Code, DEFENDANT
14 inaccurately records overtime worked and consequently underpays the overtime worked
15 by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members.
16 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
17 other benefits in violation of the California Labor Code, the Industrial Welfare
18 Commission requirements and other applicable laws and regulations.

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

23 80. As a direct result of DEFENDANT'S unlawful wage practices as alleged
24 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 did not receive full compensation for all overtime worked.

26 81. Cal. Lab. Code § 515 sets out various categories of employees who are
27 exempt from the overtime requirements of the law. None of these exemptions are
28 applicable to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
CLASS. Further PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS are not subject to a valid collective bargaining agreement that would preclude the
2 causes of action contained herein this Complaint. Rather, PLAINTIFF bring this Action
3 on behalf of themselves and the CALIFORNIA LABOR SUB-CLASS based on
4 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State
5 of California.

6 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
7 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
8 worked than they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

24 **(Cal. Lab. Code §§ 226.7 & 512)**

25 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
26 **all Defendants)**

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

89. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

90. 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 meal 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 a meal period was not provided.

91. 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.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

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

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

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

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

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1 98. When PLAINTIFF and other CALIFORNIA CLASS Members were not
2 paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed
3 to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
4 complete and accurate wage statements which failed to show, among other things, the
5 correct gross and net wages earned, including, work performed in excess of eight (8) hours
6 in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
7 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
8 furnish each of his or her employees with an accurate itemized wage statement in writing
9 showing, among other things, gross wages earned and all applicable hourly rates in effect
10 during the pay period and the corresponding amount of time worked at each hourly rate.
11 Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
12 itemized wage statement that lists all the requirements under California Labor Code 226
13 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
14 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
15 Code § 226.

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

28

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES
(Cal. Lab. Code §2802)
(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

100. 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.

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

An employed 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, believe them to be unlawful.

102. 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 their required uniform and using their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to purchase their own uniforms to perform work. Additionally, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR

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

4 103. PLAINTIFF therefore demands reimbursement for expenditures or losses
5 incurred by themselves and the CALIFORNIA LABOR SUB-CLASS members in the
6 discharge of their job duties for DEFENDANT, or their obedience to the directions of
7 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code §2802.

8 **EIGHTH CAUSE OF ACTION**
9 **FAILURE TO PAY WAGES WHEN DUE**
10 **(Cal. Lab. Code §§201, 202, 203)**
11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
12 **all Defendants)**

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

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

16 As used in this article:

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

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

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

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

26 If an employee not having a written contract for a definite period quits his or
27 her employment, his or her wages shall become due and payable not later
28 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

1 provision of law, an employee who quits without providing a 72-hour notice
2 shall be entitled to receive payment by mail if he or she so requests and
3 designates a mailing address. The date of the mailing shall constitute the date
4 of payment for purposes of the requirement to provide payment within 72
5 hours of the notice of quitting.

6 108. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
7 SUB-CLASS Members' employment contract.

8 109. Cal. Lab. Code § 203 provides:

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

15 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
16 CLASS Members terminated and DEFENDANT have not tendered payment of overtime
17 wages, to these employees who actually worked overtime, as required by law.

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

24 **NINTH CAUSE OF ACTION**
25 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**
26 **[Cal. Lab. Code §§ 2698 et seq.]**
27 **(Alleged by PLAINTIFF against all Defendants)**

28 112. PLAINTIFF realleges and incorporate by this reference, as though fully set
forth herein, the prior paragraphs of this Complaint.

113. The Private Attorney General Act ("PAGA") is a mechanism by which the
State of California itself can enforce state labor laws through the employee suing under
the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies.

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

9 114. PLAINTIFF, and such persons that may be added from time to time who
10 satisfy the requirements and exhaust the administrative procedures under the Private
11 Attorney General Act, bring this Representative Action on behalf of the State of California
12 with respect to herself and all individuals who are or previously were employed by
13 DEFENDANT in California during the time period of February 4, 2021 until the present
14 (the "AGGRIEVED EMPLOYEES").

15 115. On February 4, 2022, PLAINTIFF, via counsel, sent the statutorily required
16 notice to the Labor and Workforce Development Agency (the "Agency").

17 116. On February 4, 2022, PLAINTIFF, via counsel, also sent a copy of the
18 February 4, 2022 notice to DEFENDANT of the specific provisions of this code alleged
19 to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
20 hereto and incorporated by this reference herein. The statutory waiting period for
21 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant
22 to Section 2699.3, PLAINTIFF may now commence a representative civil action under
23 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
24 AGGRIEVED EMPLOYEES as herein defined. Therefore, PLAINTIFF has exhausted the
25 administrative requirements as required under PAGA.

26 117. The policies, acts and practices heretofore described were and are an
27 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
28 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and

1 rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
2 pay wages, (e) failed to pay earned wages in violation of the applicable Labor Code
3 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201,
4 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the
5 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result
6 of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
7 Labor Code Private Attorney General Act of 2004 as the representative of the State of
8 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
9 EMPLOYEES.

10 118. Some or all of the conduct and violations alleged herein occurred during the
11 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did
12 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
13 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
14 *Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
15 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
16 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
17 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
added, reh'g denied (June 13, 2018).)

18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANTS,
20 jointly and severally, as follows:

21 1. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the First Cause of Action asserted by the
23 CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc.
24 § 382;
- 25 b. An order temporarily, preliminarily and permanently enjoining and
26 restraining DEFENDANT from engaging in similar unlawful conduct as set
27 forth herein;
- 28 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFF and the other members of
2 the CALIFORNIA CLASS; and

3 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
4 fund for restitution of the sums incidental to DEFENDANT's violations due
5 to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

7 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
8 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-
9 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

10 b. Compensatory damages, according to proof at trial, including compensatory
11 damages for minimum wages and overtime compensation and unreimbursed
12 expenses due PLAINTIFF and the other members of the CALIFORNIA
13 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
14 CLASS PERIOD plus interest thereon at the statutory rate;

15 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
16 512 and the applicable IWC Wage Order;

17 d. Liquidated damages pursuant to California Labor Code §§ 1194.2 and
18 1197.1;

19 e. The greater of all actual damages or fifty dollars (\$50) for the initial pay
20 period in which a violation occurs and one hundred dollars (\$100) per each
21 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
22 subsequent pay period, not exceeding an aggregate penalty of four thousand
23 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code
24 §226; and

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

- 1 g. Penalties pursuant to Cal. Lab. Code §1198.5.
- 2 3. On behalf of the State of California and with respect to all AGGRIEVED
- 3 EMPLOYEES:
- 4 a. Recovery of civil penalties as prescribed by the Labor Code Private
- 5 Attorneys General Act of 2004 and other applicable laws; and
- 6 b. An award of penalties, attorneys' fees and costs of suit, as allowable under
- 7 the law.
- 8 c. An award of reasonable attorneys' fees, costs and filing fees paid to the
- 9 LWDA pursuant to California Labor Code § 2699(g) and/or other applicable
- 10 law;
- 11 d. An award of reasonable attorneys' fees and costs pursuant to California
- 12 Labor Code § 226, 248.5, and/or other applicable law;
- 13 e. Pre-judgment interest as provided by law;
- 14 4. On all claims:
- 15 a. An award of interest, including prejudgment interest at the legal rate;
- 16 b. Such other and further relief as the Court deems just and equitable; and
- 17 c. An award of penalties, attorneys' fees and costs of suit, as allowable under
- 18 the law, including, but not limited to, pursuant to Labor Code §218.5, §226,
- 19 §1194 and/or §2802.
- 20

21 Dated: May 2, 2022

22 **BARVIÉ LAW, APC**

23 By: 
24 _____
25 NICOLE BARVIÉ
26 Attorneys for Plaintiff(s)
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DEMAND FOR A JURY TRIAL

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

Dated: May 2, 2022

BARVIÉ LAW, APC

By



NICOLE BARVIÉ
Attorneys for Plaintiff(s)

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EXHIBIT 1

February 9, 2022

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO EMPLOYER

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i>	Lusk Quality Machine Products Attn: Human Resources Department 39457 15th ST East Palmdale, CA 93550 <i>Via Certified Mail</i> FISHER & PHILLIPS, LLP Jamie L. Gross, Esq. 4747 Executive Drive, Suite 1000 San Diego, CA 92121 Email: jgross@fisherphillips.com Attorney for: Lusk Quality Machine Products <i>Courtesy Copy Via Electronic Service</i>
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Re: **Notice of Violation of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 226(a), 226.2, 226.3, 226.7, 227.3, 246 et seq., 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, Violations of Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our office represents Plaintiff Daniel Matthews (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Lusk Quality Machine Products, a California Corporation (herein referred as “Defendant”).

“Aggrieved Employees” refers to all individuals who are or were previously employed by Defendant Lusk Quality Machine Products in California and classified as non-exempt employees during the time period of December 29, 2020 until a date as determined by the Court. Plaintiff has been employed by Defendant in California beginning June 3, 2019 to on or about February





2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as overtime wages and accurate wage statements. Defendant also failed to pay Plaintiff and other aggrieved employees' minimum wages and overtime and meal and rest break premiums. Defendant also failed to reimburse Plaintiff and other aggrieved employees for business-related expenses. Further, failure to compensate Plaintiff and other Aggrieved Employees for all time worked, including but not limited to donning and doffing personal protective equipment ("PPE"). Defendants also failed to correctly calculate Plaintiff's regular rate of pay for purposes of payment of overtime and sick time pay. Further, Defendants unlawfully failed to timely pay Plaintiff and other Aggrieved Employees for earned wages. Additionally, Plaintiff and other Aggrieved Employees used their personal cellular phones to execute their job duties and had to purchase their uniforms and as such, Defendant failed to reimburse Plaintiff and other Aggrieved Employees for the costs related to the use of their personal cellular phones to execute their job duties and for purchase of their uniforms. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates §§ 201, 202, 203, 204 *et seq.*, 226(a), 226.2, 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, Violations of Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.5

Plaintiff seeks to represent a group of Aggrieved Employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period. A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved California Employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the below number and address.

Respectfully,



Nicole Barvié

Nicole Barvié
Attorney for Plaintiff

1 **BARVIÉ LAW, APC**
2 NICOLE BARVIÉ, State Bar No. 282352
3 nicole@barvielaw.com
4 550 West B Street, 4th Floor
5 San Diego, CA 92101-3598
6 Telephone: 858.255.0928

7 Attorney for Plaintiff Daniel Matthews

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 DANIEL MATTHEWS, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

13 Plaintiffs,

14 v.

15 LUSK QUALITY MACHINE
16 PRODUCTS, a California Corporation;
17 and DOES 1-50, Inclusive,

18 Defendant(s).

Case No.

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 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) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.; and

DEMAND FOR JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant LUSK QUALITY MACHINE PRODUCTS (“DEFENDANT”
7 or “DEFENDANTS”) is a California Corporation and at all relevant times mentioned
8 herein conducted and continues to conduct substantial and regular business in California.

9 2. DEFENDANT is a manufacturer of CNC turning and screw machining
10 custom parts.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-
12 exempt employee entitled to minimum wages, accurate wage statements, overtime pay
13 and meal and rest periods from June 3, 2019 to February 9, 2021. PLAINTIFF was at all
14 times relevant mentioned herein classified by DEFENDANT as a non-exempt employee
15 paid in whole or in part on an hourly basis and entitled to the legally required meal and
16 rest periods and payment of minimum and overtime wages due for all the time worked.
17 DEFENDANT as a non-exempt employee is also entitled to accurate itemized wage
18 statements.

19 4. PLAINTIFF brings this Class Action on behalf of himself and a California
20 class, defined as all individuals who are or previously were employed by DEFENDANT
21 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at
22 any time between during the period beginning four (4) years prior to the filing of the
23 complaint and ending on the date as determined by the Court (the “CALIFORNIA
24 CLASS PERIOD”). The amount in controversy for the aggregate claim of
25 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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1 shoes, uniform, safety glasses, safety gloves, facial covering mask, and ear plugs.
2 Finally, PLAINTIFF and other members of the CALIFORNIA CLASS from time to time
3 were not paid wages for all the time worked, including overtime wages, such that in the
4 aggregate employees were underpaid wages as a result of DEFENDANT's pattern and
5 practice of unevenly rounding time worked by its employees. DEFENDANTS also
6 underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS
7 MEMBERS by failing to pay such wages at the regular rate of pay. Specifically,
8 PLAINTIFF and other non-exempt employees regularly earn non-discretionary
9 remuneration, including but not limited to, incentives, shift differential pay and bonuses.
10 Rather, than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
11 PLAINTIFF and other CALIFORNIA CLASS MEMBERS at their base rates of pay. As
12 a result, PLAINTIFF and other California CLASS Members forfeit minimum wage,
13 overtime wage compensation, and off-duty meal breaks by working without their time
14 being correctly recorded and without compensation at the applicable rates. As a result,
15 the PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited
16 minimum wage and overtime compensation by working without their time being
17 accurately recorded and without compensation at the applicable minimum wage and
18 overtime rates. DEFENDANT'S uniform policy and practice not to pay PLAINTIFF and
19 other CALIFORNIA CLASS Members for all time worked is evidenced by
20 DEFENDANT'S business records.

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

25 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have
26 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
27 other CALIFORNIA CLASS Members for the actual time these employees worked each
28 day, including overtime hours. As a result DEFENDANT was able to and did in fact

1 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping
2 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
3 paying these employees the applicable overtime compensation for overtime worked and
4 to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
5 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by
6 working without their time being accurately recorded and without compensation at the
7 applicable overtime rates.

8 11. The mutability of the timekeeping system also allowed DEFENDANT to
9 alter employee time records by recording fictitious thirty (30) minute meal breaks in
10 DEFENDANT's timekeeping system so as to create the appearance that PLAINTIFF and
11 other CALIFORNIA CLASS Members clocked out for a thirty (30) minute meal break
12 when in fact the employees were not at all times provided an off-duty meal break. This
13 practice is a direct result of DEFENDANTS' uniform policy and practice of denying
14 employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
15 compensate them for missed meal breaks

16 12. As a result of their rigorous work schedules, PLAINTIFF and other
17 CALIFORNIA CLASS Members were also from time to time unable to take off duty
18 meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
19 CALIFORNIA CLASS Members were required to perform work as ordered by
20 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
21 meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA
22 CLASS Members with a second off-duty meal period each workday in which these
23 employees were required by DEFENDANT to work ten (10) hours of work. From time to
24 time, when a meal break was provided, PLAINTIFF was required to remain on
25 DEFENDANT's premises, on-call and on-duty, and was interrupted with work.
26 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
27 breaks without additional compensation and in accordance with DEFENDANT's strict
28 corporate policy and practice

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

25 14. When PLAINTIFF and other CALIFORNIA CLASS Members were not
26 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANT also
27 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
28 complete and accurate wage statements which failed to show, among other things, the

1 time worked, including, work performed in excess of eight (8) hours in a workday and/or
2 forty (40) hours in any workweek, and the correct penalty payments or missed meal and
3 rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his
4 or her employees with an accurate itemized wage statement in writing showing, among
5 other things, gross wages earned and all applicable hourly rates in effect during the pay
6 period and the corresponding amount of time worked at each hourly rate. Aside, from the
7 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
8 itemized wage statement that lists all the requirements under California Labor Code 226
9 *et seq.*, As a result, from time to time DEFENDANT provided PLAINTIFF and the other
10 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
11 Code § 226.

12 15. By reason of this uniform conduct applicable to PLAINTIFF and all
13 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition
14 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
15 *et seq.* (the “UCL”), by engaging in a company-wide policy and procedure which failed to
16 accurately calculate and record the correct time and overtime for the time worked by
17 PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
18 employees’ time is the DEFENDANT’s burden. As a result of DEFENDANT’s
19 intentional disregard of the obligation to meet this burden, DEFENDANT failed to
20 properly calculate and/or pay all required compensation for work performed by the
21 members of the CALIFORNIA CLASS and violated the California Labor Code and
22 regulations promulgated thereunder as herein alleged.

23 16. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission (“IWC”) Wage Order,
25 DEFENDANT as a matter of company policy, practice and procedure, intentionally and
26 knowingly failed to compensate PLAINTIFF and the other members of the
27 CALIFORNIA CLASS for missed meal and rest periods. This uniform policy and
28 practice of DEFENDANT is intended to purposefully avoid the payment for all time

1 worked as required by California law which allows DEFENDANT to illegally profit and
2 gain an unfair advantage over competitors who complied with the law. To the extent
3 equitable tolling operates to toll claims by the CALIFORNIA CLASS against
4 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

5 17. By reason of this uniform conduct applicable to PLAINTIFF and all
6 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition
7 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
8 *et seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
9 accurately calculate and record all missed meal and rest periods by PLAINTIFF and
10 other CALIFORNIA CLASS Members. The proper recording of these employees’
11 missed meal and rest breaks is the DEFENDANT’s burden. As a result of
12 DEFENDANT’s intentional disregard of the obligation to meet this burden,
13 DEFENDANT failed to properly calculate and/or pay all required compensation for work
14 performed by the members of the CALIFORNIA CLASS and violated the California
15 Labor Code and regulations promulgated thereunder as herein alleged.

16 18. Specifically as to PLAINTIFF’s pay, PLAINTIFF was from time to time
17 unable to take off duty meal and rest breaks and was not fully relieved of duty for his
18 meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT
19 for more than five (5) hours during a shift without receiving an off-duty meal break.
20 Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
21 each workday in which he was required by DEFENDANT to work ten (10) hours of
22 work. PLAINTIFF therefore forfeited meal and rest breaks without additional
23 compensation and in accordance with DEFENDANT’s strict policy and practice. To
24 date, DEFENDANT have not fully paid PLAINTIFF the minimum wage and overtime
25 compensation still owed to his or any penalty wages owed to them under Cal. Lab. Code
26 § 203.

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1 Order requirements, and the applicable provisions of California law, intentionally,
2 knowingly, and willfully, engages in practice whereby DEFENDANT fails to record all
3 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
4 even though DEFENDANT enjoys the benefit of this work, requires employees to perform
5 this work and permits or suffers to permit this work.

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

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

- 17 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
18 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
19 company policies, practices and procedures that failed to pay all wages due
20 the CALIFORNIA CLASS for all minimum wages and overtime worked.
- 21 b. Committing an act of unfair competition in violation of the California Unfair
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
23 provide mandatory meal and/or rest breaks to PLAINTIFF and the
24 CALIFORNIA CLASS members;
- 25 c. Committing an act of unfair competition in violation of the California Unfair
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating
27 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
28

1 CALIFORNIA CLASS Members with necessary expenses incurred in the
2 discharge of their job duties.

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

- 5 a. The persons who comprise the CALIFORNIA CLASS are so numerous that
6 the joinder of all such persons is impracticable and the disposition of their
7 claims as a class will benefit the parties and the Court;
- 8 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
9 that are raised in this Complaint are common to the CALIFORNIA CLASS
10 will apply uniformly to every member of the CALIFORNIA CLASS;
- 11 c. The claims of the representative PLAINTIFF are typical of the claims of
12 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other
13 members of the CALIFORNIA CLASS, was subjected to the uniform
14 employment practices of DEFENDANT and was a non-exempt employee
15 paid on an hourly basis and paid additional non-discretionary incentive
16 wages who was subjected to the DEFENDANT's practice and policy which
17 failed to pay the correct rate of overtime wages due to the CALIFORNIA
18 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
19 systematically under pays overtime compensation to the CALIFORNIA
20 CLASS. PLAINTIFF sustained economic injury as a result of
21 DEFENDANT's employment practices. PLAINTIFF and the members of
22 the CALIFORNIA CLASS were and are similarly or identically harmed by
23 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
24 engaged in by DEFENDANT; and
- 25 d. The representative PLAINTIFF will fairly and adequately represent and
26 protect the interest of the CALIFORNIA CLASS, and has retained counsel
27 who are competent and experienced in Class Action litigation. There are no
28 material conflicts between the claims of the representative PLAINTIFF and

1 the members of the CALIFORNIA CLASS that would make class
2 certification inappropriate. Counsel for the CALIFORNIA CLASS will
3 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

7 a. Without class certification and determination of declaratory, injunctive,
8 statutory and other legal questions within the class format, prosecution of
9 separate actions by individual members of the CALIFORNIA CLASS will
10 create the risk of:

11 i. Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA CLASS which would establish
13 incompatible standards of conduct for the parties opposing the
14 CALIFORNIA CLASS; and/or;

15 ii. Adjudication with respect to individual members of the
16 CALIFORNIA CLASS which would as a practical matter be
17 dispositive of interests of the other members not party to the
18 adjudication or substantially impair or impede their ability to protect
19 their interests.

20 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act
21 on grounds generally applicable to the CALIFORNIA CLASS, making
22 appropriate class-wide relief with respect to the CALIFORNIA CLASS as a
23 whole in that DEFENDANT uniformly failed to pay all wages due, including
24 the correct overtime rate, for all time worked by the members of the
25 CALIFORNIA CLASS as required by law;

26 i. With respect to the First Cause of Action, the final relief on behalf of
27 the CALIFORNIA CLASS sought does not relate exclusively to
28 restitution because through this claim PLAINTIFF seek declaratory

1 relief holding that the DEFENDANT's policy and practices constitute
2 unfair competition, along with declaratory relief, injunctive relief,
3 and incidental equitable relief as may be necessary to prevent and
4 remedy the conduct declared to constitute unfair competition;

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

11 i. The interests of the members of the CALIFORNIA CLASS in
12 individually controlling the prosecution or defense of separate actions
13 in that the substantial expense of individual actions will be avoided
14 to recover the relatively small amount of economic losses sustained
15 by the individual CALIFORNIA CLASS Members when compared
16 to the substantial expense and burden of individual prosecution of this
17 litigation;

18 ii. Class certification will obviate the need for unduly duplicative
19 litigation that would create the risk of:

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

24 2. Adjudications with respect to individual members of the
25 CALIFORNIA CLASS would as a practical matter be
26 dispositive of the interests of the other members not parties to
27 the adjudication or substantially impair or impede their ability
28 to protect their interests;

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

12 29. The Court should permit this action to be maintained as a Class Action
13 pursuant to Cal. Code of Civ. Proc. § 382 because:

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

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

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

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

- 5 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
6 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
7 violation of the California Labor Code and California regulations and the
8 applicable California Wage Order;
- 9 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
10 entitled to overtime compensation for overtime worked under the overtime
11 pay requirements of California law;
- 12 c. Whether DEFENDANT failed to provide PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS with legally required
14 uninterrupted thirty (30) minute meal breaks and rest periods;
- 15 d. Whether DEFENDANT failed to provide PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS with accurate
17 itemized wage statements;
- 18 e. Whether DEFENDANT have engaged in unfair competition by the above-
19 listed conduct;
- 20 f. The proper measure of damages and penalties owed to the members of the
21 CALIFORNIA LABOR SUB-CLASS; and
- 22 g. Whether DEFENDANT's conduct was willful.

23 36. DEFENDANT, as a matter of company policy, practice and procedure,
24 failed to accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed
25 to provide accurate records of the time worked by these employees. All of the
26 CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-
27 exempt employees who were paid on an hourly basis by DEFENDANT according to
28 uniform and systematic company procedures as alleged herein above. This business

1 practice was uniformly applied to each and every member of the CALIFORNIA LABOR
2 SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-
3 wide basis.

4 37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
5 CLASS under California law by:

- 6 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
7 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
8 SUB-CLASS the correct minimum wage pay for which DEFENDANT is
9 liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 10 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
11 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
12 the correct overtime pay for which DEFENDANT are liable pursuant to Cal.
13 Lab. Code § 1194 & § 1198;
- 14 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
15 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
16 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
17 the legally required rest breaks;
- 18 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
19 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
20 itemized statement in writing showing time worked at by the employee;
- 21 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
22 an employee is discharged or quits from employment, the employer must
23 pay the employee all wages due without abatement, by failing to tender full
24 payment and/or restitution of wages owed or in the manner required by
25 California law to the members of the CALIFORNIA LABOR SUB-CLASS
26 who have terminated their employment.
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1 f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
2 the CALIFORNIA LABOR SUB-CLASS members with necessary
3 expenses incurred in the discharge of their job duties.

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

6 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
7 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
8 Members is impracticable and the disposition of their claims as a class will
9 benefit the parties and the Court;

10 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
11 that are raised in this Complaint are common to the CALIFORNIA LABOR
12 SUB-CLASS and will apply uniformly to every member of the
13 CALIFORNIA LABOR SUB-CLASS;

14 c. The claims of the representative PLAINTIFF are typical of the claims of
15 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
16 like all the other members of the CALIFORNIA LABORSUB-CLASS, was
17 a non-exempt employee paid on an hourly basis and paid additional non-
18 discretionary incentive wages who was subjected to the DEFENDANT's
19 practice and policy which failed to pay the correct rate of overtime wages
20 due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked.
21 PLAINTIFF sustained economic injury as a result of DEFENDANT's
22 employment practices. PLAINTIFF and the members of the CALIFORNIA
23 LABOR SUB-CLASS were and are similarly or identically harmed by the
24 same unlawful, deceptive, unfair and pervasive pattern of misconduct
25 engaged in by DEFENDANT; and

26 d. The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
28 retained counsel who are competent and experienced in Class Action

1 litigation. There are no material conflicts between the claims of the
2 representative PLAINTIFF and the members of the CALIFORNIA LABOR
3 SUB-CLASS that would make class certification inappropriate. Counsel for
4 the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims
5 of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

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

7 i. The interests of the members of the CALIFORNIA LABOR SUB-
8 CLASS in individually controlling the prosecution or defense of
9 separate actions in that the substantial expense of individual actions
10 will be avoided to recover the relatively small amount of economic
11 losses sustained by the individual CALIFORNIA LABOR SUB-
12 CLASS Members when compared to the substantial expense and
13 burden of individual prosecution of this litigation;

14 ii. Class certification will obviate the need for unduly duplicative
15 litigation that would create the risk of:

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

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

25 iii. In the context of wage litigation because a substantial number of
26 individual CALIFORNIA LABOR SUB-CLASS Members will
27 avoid asserting their legal rights out of fear of retaliation by
28 DEFENDANT which may adversely affect an individual's job with

1 DEFENDANT or with a subsequent employer, the Class Action is the
2 only means to assert their claims through a representative; and,

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

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

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

injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

42. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof. Code § 17021.

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

5 Any person who engages, has engaged, or proposes to engage in unfair competition
6 may be enjoined in any court of competent jurisdiction. The court may make such
7 orders or judgments, including the appointment of a receiver, as may be necessary
8 to prevent the use or employment by any person of any practice which constitutes
9 unfair competition, as defined in this chapter, or as may be necessary to restore to
10 any person in interest any money or property, real or personal, which may have
11 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
12 17203).

13 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
14 engage in a business practice which violates California law, including but not limited to,
15 the applicable Wage Order(s), the California Code of Regulations and the California Labor
16 Code including Sections 201, 202, 203, 204, 226(a), 210, 226.7, 510, 512, 558, 1194, 1197
17 & 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable
18 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
19 remedy the conduct held to constitute unfair competition, including restitution of wages
20 wrongfully withheld.

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

27 46. By the conduct alleged herein, DEFENDANT’s practices were deceptive
28 and fraudulent in that DEFENDANT’s uniform policy and practice failed to pay
PLAINTIFF, and other members of the CALIFORNIA CLASS, minimum wages, wages
due for overtime worked, and failed to provide the required amount of overtime

1 compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
2 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which
3 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
4 § 17203, including restitution of wages wrongfully withheld.

5 47. By the conduct alleged herein, DEFENDANT's practices were also
6 unlawful, unfair and deceptive in that DEFENDANT's employment practices caused
7 PLAINTIFF and the other members of the CALIFORNIA CLASS to be underpaid during
8 their employment with DEFENDANT.

9 48. By the conduct alleged herein, DEFENDANT's practices were also unfair
10 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to
11 provide all legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
12 CLASS members as required by Cal. Lab. Code §§226.7 and 512.

13 49. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
14 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-
15 duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
16 hour of pay for each workday in which a second off-duty meal period was not timely
17 provided for each ten (10) hours of work.

18 50. PLAINTIFF further demands on behalf of himself and on behalf of each
19 CALIFORNIA CLASS member and CALIFORNIA LABOR SUB-CLASS, one (1) hour
20 of pay for each workday in which an off duty rest period rest period was not timely
21 provided as required by law.

22 51. By and through the unlawful and unfair business practices described herein,
23 DEFENDANT have obtained valuable property, money and services from PLAINTIFF
24 and the other members of the CALIFORNIA CLASS, including earned wages for all time
25 worked, and has deprived them of valuable rights and benefits guaranteed by law and
26 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as
27 to allow DEFENDANT to unfairly compete against competitors who comply with the law.
28

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

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

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

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

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**
26 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

27 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**
28 **ALL Defendants)**

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

4 57. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
6 California Labor Code and the Industrial Welfare Commission requirements for
7 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF
8 and CALIFORNIA CLASS Members.

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

11 59. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
12 the commission is the minimum wage to be paid to employees, and the payment of a wage
13 less than the minimum so fixed is unlawful.

14 60. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
15 wages, including reporting time pay and minimum wage compensation and interest
16 thereon, together with the costs of suit.

17 61. DEFENDANT maintains a uniform wage practice of paying PLAINTIFF and
18 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
19 correct amount of time they work. As set forth herein, DEFENDANT's uniform policy
20 and practice was to unlawfully and intentionally deny timely payment of wages due to
21 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

22 62. DEFENDANT's uniform pattern of unlawful wage and hour practices
23 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as
24 a whole, as a result of implementing a uniform policy and practice that denies accurate
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS in regards to minimum wage pay.

27 63. In committing these violations of the California Labor Code, DEFENDANT
28 inaccurately calculated the correct time worked and consequently underpays the actual
time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-

1 CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned
2 wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
3 Commission requirements and other applicable laws and regulations.

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

8 65. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
9 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
10 worked than they were entitled to, constituting a failure to pay all earned wages.
11 DEFENDANT fails to accurately pay the PLAINTIFF and members of the CALIFORNIA
12 LABOR SUB-CLASS the wages for the time they work in accordance with 1197 &
13 1197.1, even though the PLAINTIFF and the other members of the CALIFORNIA
14 LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in fact
15 work, off the clock time as to which DEFENDANT fails to accurately record and pay as
16 evidence by DEFENDANT's business records and witnessed by employees.

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

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

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

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

17 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
18 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
19 statutory costs, as well as the assessment of any statutory penalties against
20 DEFENDANTS, in a sum as provided by the California Labor Code and/or other
21 applicable statutes. To the extent minimum wage compensation is determined to be owed
22 to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
23 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and
24 therefore these individuals are also entitled to waiting time penalties under Cal. Lab. Code
25 §203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-
26 CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and
27 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
28 Members are entitled to seek and recover statutory costs.

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FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)
(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against
ALL Defendants)

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

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

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

1 77. DEFENDANT's uniform pattern of unlawful wage and hour practices
2 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as
3 a whole, as a result of implementing a uniform policy and practice that failed to accurately
4 record overtime worked by PLAINTIFF and the other members of the CALIFORNIA
5 LABOR SUB-CLASS, and denied accurate compensation to PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the
7 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a
8 workday, and/or forty (40) hours in any workweek.

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

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

19 80. As a direct result of DEFENDANT'S unlawful wage practices as alleged
20 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 did not receive full compensation for all overtime worked.

22 81. Cal. Lab. Code § 515 sets out various categories of employees who are
23 exempt from the overtime requirements of the law. None of these exemptions are
24 applicable to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS. Further PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS are not subject to a valid collective bargaining agreement that would preclude the
27 causes of action contained herein this Complaint. Rather, PLAINTIFF bring this Action
28 on behalf of themselves and the CALIFORNIA LABOR SUB-CLASS based on

1 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State
2 of California.

3 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
5 worked than they were entitled to, constituting a failure to pay all earned wages.

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

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

19 85. DEFENDANT knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their
21 overtime worked. DEFENDANT systematically elected, either through intentional
22 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
23 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
24 systematic scheme by refusing to pay PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

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

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

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

21 **(Cal. Lab. Code §§ 226.7 & 512)**

22 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
23 **all Defendants)**

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

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

1 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved
2 of all of their duties for the legally required off-duty meal periods. As a result of their
3 rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
4 Members were often not fully relieved of duty by DEFENDANT for their meal periods.
5 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)
7 hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF
8 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
9 breaks without additional compensation and in accordance with DEFENDANT's strict
10 corporate policy and practice.

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

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

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

22 **(Cal. Lab. Code §§ 226.7 & 512)**

23 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against
24 all Defendants)**

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

27 93. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
28 were required to work in excess of four (4) hours without being provided ten (10) minute

1 rest periods. Further, these employees were denied their first rest periods of at least ten
2 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second
3 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight
4 (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
5 shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR
6 SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a
7 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
8 SUB-CLASS Members were periodically denied their proper rest periods by
9 DEFENDANT and DEFENDANT's managers.

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

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

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

21 **(Cal. Lab. Code § 226)**

22 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
23 **and against all Defendants)**

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

27 97. Cal. Labor Code § 226 provides that an employer must furnish employees
28 within "accurate itemized" statement in writing showing:

a. Gross wages earned;

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

18 98. When PLAINTIFF and other CALIFORNIA CLASS Members were not
19 paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed
20 to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
21 complete and accurate wage statements which failed to show, among other things, the
22 correct gross and net wages earned, including, work performed in excess of eight (8) hours
23 in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
24 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
25 furnish each of his or her employees with an accurate itemized wage statement in writing
26 showing, among other things, gross wages earned and all applicable hourly rates in effect
27 during the pay period and the corresponding amount of time worked at each hourly rate.
28 Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an

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

5 99. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
6 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
7 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to,
8 costs expended calculating the time worked and the amount of employment taxes which
9 were not properly paid to state and federal tax authorities. These damages are difficult to
10 estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
11 SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
12 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for
13 each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount
14 according to proof at the time of trial (but in no event more than four thousand dollars
15 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR
16 SUB-CLASS herein.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

19 **(Cal. Lab. Code §2802)**

20 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
21 **all Defendants)**

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

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

26 An employed shall indemnify his or her employee for all necessary
27 expenditures or losses incurred by the employee in direct consequence of the
28 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, believe them to be unlawful.

1 102. At all relevant times herein, DEFENDANT violated Cal. Lab Code §2802, by
2 failing to indemnify and reimburse PLAINTIFF and the California Labor Sub-Class
3 Members for required expenses incurred in the discharge of their job duties for
4 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
5 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
6 limited to, costs related to their required uniform and using their personal cellular phones on
7 behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
8 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to
9 purchase their own uniforms to perform work. Additionally, PLAINTIFF and other
10 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use
11 their personal cellular phones in order to perform work related job tasks. DEFENDANT's
12 policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
13 CLASS members for expenses resulting from using their personal cellular phones for
14 DEFENDANT within the course and scope of their employment for DEFENDANT. These
15 expenses were necessary to complete their principal job duties. DEFENDANT is estopped
16 by DEFENDANT's conduct to assert any waiver of this expectation. Although these
17 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR
18 SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
19 the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is
20 required to do under the laws and regulations of California.

21 103. PLAINTIFF therefore demands reimbursement for expenditures or losses
22 incurred by themselves and the CALIFORNIA LABOR SUB-CLASS members in the
23 discharge of their job duties for DEFENDANT, or their obedience to the directions of
24 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code §2802.

25 **EIGHTH CAUSE OF ACTION**
26 **FAILURE TO PAY WAGES WHEN DUE**
27 **(Cal. Lab. Code §§201, 202, 203)**
28 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against
all Defendants)**

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

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

6 As used in this article:

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

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

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

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

18 If an employee not having a written contract for a definite period quits his or
19 her employment, his or her wages shall become due and payable not later
20 than 72 hours thereafter, unless the employee has given 72 hours previous
21 notice of his or her intention to quit, in which case the employee is entitled
22 to his or her wages at the time of quitting. Notwithstanding any other
23 provision of law, an employee who quits without providing a 72-hour notice
24 shall be entitled to receive payment by mail if he or she so requests and
25 designates a mailing address. The date of the mailing shall constitute the date
26 of payment for purposes of the requirement to provide payment within 72
27 hours of the notice of quitting.

28 108. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
SUB-CLASS Members' employment contract.

109. Cal. Lab. Code § 203 provides:

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.

110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT have not tendered payment of overtime wages, to these employees who actually worked overtime, as required by law.

111. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF demands up to 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

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 et seq.]

(Alleged by PLAINTIFF against all Defendants)

112. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

114. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California

1 with respect to herself and all individuals who are or previously were employed by
2 DEFENDANT in California during the time period of February 4, 2021 until the present
3 (the "AGGRIEVED EMPLOYEES").

4 115. On February 4, 2022, PLAINTIFF, via counsel, sent the statutorily required
5 notice to the Labor and Workforce Development Agency (the "Agency").

6 116. On February 4, 2022, PLAINTIFF, via counsel, also sent a copy of the
7 February 4, 2022 notice to DEFENDANT of the specific provisions of this code alleged
8 to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
9 hereto and incorporated by this reference herein. The statutory waiting period for
10 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant
11 to Section 2699.3, PLAINTIFF may now commence a representative civil action under
12 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
13 AGGRIEVED EMPLOYEES as herein defined. Therefore, PLAINTIFF has exhausted the
14 administrative requirements as required under PAGA.

15 117. The policies, acts and practices heretofore described were and are an
16 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
17 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
18 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
19 rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
20 pay wages, (e) failed to pay earned wages in violation of the applicable Labor Code
21 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201,
22 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the
23 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result
24 of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
25 Labor Code Private Attorney General Act of 2004 as the representative of the State of
26 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
27 EMPLOYEES.

28 118. Some or all of the conduct and violations alleged herein occurred during the
PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did

1 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
2 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
3 *Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
4 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
5 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
6 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
7 added, reh'g denied (June 13, 2018).)

8 PRAYER FOR RELIEF

9 WHEREFORE, Plaintiff prays for a judgment against each Defendants, jointly and
10 severally, as follows:

11 1. On behalf of the CALIFORNIA CLASS:

- 12 a. That the Court certify the First Cause of Action asserted by the
13 CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc.
14 § 382;
15 b. An order temporarily, preliminarily and permanently enjoining and
16 restraining DEFENDANT from engaging in similar unlawful conduct as set
17 forth herein;
18 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
19 withheld from compensation due to PLAINTIFF and the other members of
20 the CALIFORNIA CLASS; and
21 d. Restitutionary disgorgement of DEFENDANT’s ill-gotten gains into a fluid
22 fund for restitution of the sums incidental to DEFENDANT’s violations due
23 to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 25 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
26 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-
27 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
28 b. Compensatory damages, according to proof at trial, including compensatory

1 damages for minimum wages and overtime compensation and unreimbursed
2 expenses due PLAINTIFF and the other members of the CALIFORNIA
3 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
4 CLASS PERIOD plus interest thereon at the statutory rate;

- 5 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
6 512 and the applicable IWC Wage Order;
- 7 d. Liquidated damages pursuant to California Labor Code §§ 1194.2 and
8 1197.1;
- 9 e. The greater of all actual damages or fifty dollars (\$50) for the initial pay
10 period in which a violation occurs and one hundred dollars (\$100) per each
11 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
12 subsequent pay period, not exceeding an aggregate penalty of four thousand
13 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code
14 §226; and
- 15 f. The wages of all terminated employees from the CALIFORNIA LABOR
16 SUB-CLASS as a penalty from the due date thereof at the same rate until
17 paid or until an action therefore is commenced, in accordance with Cal. Lab.
18 Code §203.

19 g. Penalties pursuant to Cal. Lab. Code §1198.5.

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

- 22 a. Recovery of civil penalties as prescribed by the Labor Code Private
23 Attorneys General Act of 2004 and other applicable laws; and
- 24 b. An award of penalties, attorneys' fees and costs of suit, as allowable under
25 the law.
- 26 c. An award of reasonable attorneys' fees, costs and filing fees paid to the
27 LWDA pursuant to California Labor Code § 2699(g) and/or other applicable
28 law;

1 d. An award of reasonable attorneys' fees and costs pursuant to California
2 Labor Code § 226, 248.5, and/or other applicable law;

3 e. Pre-judgment interest as provided by law;

4 4. On all claims:

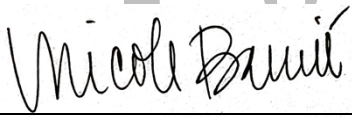
5 a. An award of interest, including prejudgment interest at the legal rate;

6 b. Such other and further relief as the Court deems just and equitable; and

7 c. An award of penalties, attorneys' fees and costs of suit, as allowable under
8 the law, including, but not limited to, pursuant to Labor Code §218.5, §226,
9 §1194 and/or §2802.
10

11 Dated: April __, 2022

12 **BARVIÉ LAW, APC**

13 By: 
14 _____

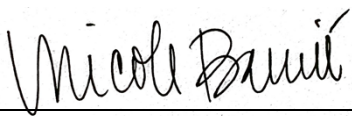
15 **NICOLE BARVIÉ**
16 Attorneys for Plaintiff(s)
17
18
19

20 **DEMAND FOR A JURY TRIAL**

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

22 Dated: April __, 2022

23 **BARVIÉ LAW, APC**

24 By 
25 _____

26 **NICOLE BARVIÉ**
27 Attorneys for Plaintiff(s)
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EXHIBIT 1