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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

APR 10 2023

BY: 
MEJALEE GAY, Deputy

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

9
10 DENNIS EBERWEIN, an individual, on behalf of
11 himself and on behalf of all persons similarly situated,
12 and on behalf of the State of California, as a private
attorney general,

13
14 Plaintiff,

15 vs.

16 PSG CALIFORNIA LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

17
18 Defendants.

Case No. CIVSB2207161

[Consolidated with CIVSB2211719]

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

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant PSG California LLC (“DEFENDANT”) is a limited liability company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California.

9 2. DEFENDANT is a part of Dover Corporation's Pump Solutions Group, and
10 manufactures air-operated double-diaphragm pumps used by pharmaceutical makers, chemical
11 manufacturers, and companies in the semiconductor, oil and gas, and process industries.

12 3. PLAINTIFF was employed by DEFENDANT in California from 1981 to August
13 of 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
14 an hourly basis, and entitled to the legally required meal and rest periods and payment of
15 minimum and overtime wages due for all time worked.

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

23 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
24 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
25 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
26 failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged
27 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
28 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA

1 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
2 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
3 the other members of the CALIFORNIA CLASS who have been economically injured by
4 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
5 equitable relief.

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

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

23 THE CONDUCT

24
25 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
26 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF

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

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

27 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
28 Members' compensation is DEFENDANT's non-discretionary incentive program that paid

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

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

26 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
28 (4) hours without being provided ten (10) minute rest periods. Further, these employees were

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

18 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
19 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
20 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
21 DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members
22 for all time worked, meaning the time during which an employee was subject to the control of
23 an employer, including all the time the employee was permitted or suffered to permit this work.
24 DEFENDANT required these employees to work off the clock without paying them for all the
25 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
26 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
27 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
28 Members forfeited time worked by working without their time being accurately recorded and

1 without compensation at the applicable minimum wage and overtime wage rates. To the extent
2 that the time worked off the clock does not qualify for overtime premium payment,
3 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
4 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

28 [I]n addition to, and entirely independent and apart from, any other penalty provided in

1 this article. every person who fails to pay the wages of each employee as provided in
2 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
3 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
4 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
5 for each failure to pay each employee, plus 25 percent of the amount unlawfully
6 withheld.

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

10 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
11 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
12 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
13 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
14 underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base
15 rates of pay.

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

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

26 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
27 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting
28 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
believes and based thereon alleges that such failure to pay sick pay at regular rate was willful,
such that PLAINTIFF and members of the CALIFORNIA CLASS whose employment has

1 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

2 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
3 to collect or receive from an employee any part of wages theretofore paid by said employer to
4 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
6 payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
7 all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA
8 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
9 each applicable pay period and upon termination. PLAINTIFF and members of the
10 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
11 according to proof, related penalties, interest, attorney fees and costs.

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

22 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
23 Members as a business expense, were required by DEFENDANT to use their own personal
24 cellular phones as a result of and in furtherance of their job duties as employees for
25 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
26 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
27 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
28 their personal cellular phones. As a result, in the course of their employment with

1 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
2 unreimbursed business expenses which included, but were not limited to, costs related to the use
3 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

15 **JURISDICTION AND VENUE**

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

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

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26 ///

THE CALIFORNIA CLASS

27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

29. 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 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work.

30. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as

1 causation, damages, and reliance are not elements of this claim.

2 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
3 CLASS Members is impracticable.

4 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
5 law by:

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

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

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

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

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

24 (c) The claims of the representative PLAINTIFF are typical of the claims of
25 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
26 other members of the CALIFORNIA CLASS, was classified as a non-
27 exempt employee paid on an hourly basis who was subjected to the
28 DEFENDANT's deceptive practice and policy which failed to provide the

1 legally required meal and rest periods to the CALIFORNIA CLASS and
2 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
3 CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members of
5 the CALIFORNIA CLASS were and are similarly or identically harmed
6 by the same unlawful, deceptive and unfair misconduct engaged in by
7 DEFENDANT; and,

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

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

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

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

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

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

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

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

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 CALIFORNIA CLASS would as a practical matter be
9 dispositive of the interests of the other members not parties
10 to the adjudication or substantially impair or impede their
11 ability to protect their interests;
- 12 3) In the context of wage litigation because a substantial number of
13 individual CALIFORNIA CLASS Members will avoid asserting
14 their legal rights out of fear of retaliation by DEFENDANT, which
15 may adversely affect an individual's job with DEFENDANT or
16 with a subsequent employer, the Class Action is the only means to
17 assert their claims through a representative; and,
- 18 4) A class action is superior to other available methods for the fair
19 and efficient adjudication of this litigation because class treatment
20 will obviate the need for unduly and unnecessary duplicative
21 litigation that is likely to result in the absence of certification of
22 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- 25 (a) The questions of law and fact common to the CALIFORNIA CLASS
26 predominate over any question affecting only individual CALIFORNIA
27 CLASS Members because the DEFENDANT's employment practices are
28 applied with respect to the CALIFORNIA CLASS;

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

1 members of the CALIFORNIA CLASS.

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

7
8 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

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

- 25 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
26 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
27 CLASS all wages due for overtime worked, for which DEFENDANT is
28 liable pursuant to Cal. Lab. Code § 1194;

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

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

- 24 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
25 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
26 Members is impracticable and the disposition of their claims as a class
27 will benefit the parties and the Court;
- 28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CALIFORNIA
2 LABOR SUB-CLASS and will apply to every member of the
3 CALIFORNIA LABOR SUB-CLASS;

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

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

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

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

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

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

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

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

1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA

LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

(a) The questions of law and fact common to the CALIFORNIA LABOR

1 SUB-CLASS predominate over any question affecting only individual
2 CALIFORNIA LABOR SUB-CLASS Members;

3 (b) A Class Action is superior to any other available method for the fair and
4 efficient adjudication of the claims of the members of the CALIFORNIA
5 LABOR SUB-CLASS because in the context of employment litigation a
6 substantial number of individual CALIFORNIA LABOR SUB-CLASS
7 Members will avoid asserting their rights individually out of fear of
8 retaliation or adverse impact on their employment;

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

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

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

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

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

27 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
28 ascertainable from the business records of DEFENDANT. The

CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

46. 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.

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

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

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

Cal. Bus. & Prof. Code § 17203.

49. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the

1 applicable Industrial Wage Order(s), the California Code of Regulations and the California
2 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,
3 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
4 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
5 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
6 unfair competition, including restitution of wages wrongfully withheld.

7 50. By the conduct alleged herein, DEFENDANT's practices were unlawful and
8 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
9 unscrupulous or substantially injurious to employees, and were without valid justification or
10 utility for which this Court should issue equitable and injunctive relief pursuant to Section
11 17203 of the California Business & Professions Code, including restitution of wages wrongfully
12 withheld.

13 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and
14 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
15 meal and rest periods, the required amount of compensation for missed meal and rest periods
16 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
17 all necessary business expenses incurred, and failed to provide Fair Labor Standards Act
18 overtime wages due for overtime worked as a result of failing to include non-discretionary
19 incentive compensation into their regular rates of pay for purposes of computing the proper
20 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.
21 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
22 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
23 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

24 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
25 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with
27 DEFENDANT.

28 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,

1 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
2 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
3 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

4 54. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
5 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
6 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
7 for each workday in which a second off-duty meal period was not timely provided for each ten
8 (10) hours of work.

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

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

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

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

28 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are further

entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

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

SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

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

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

61. 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.

62. 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.

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

64. 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 less wage than

1 the minimum so fixed in unlawful.

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

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

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

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

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

22 70. 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 other
26 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
27 were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

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

3
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Compensation**

6 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

28 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and

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

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

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

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

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

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

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

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

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

23 89. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
25 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
26 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
27 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
28 disregard for their legal rights, or the consequences to them, and with the despicable intent of

1 depriving them of their property and legal rights, and otherwise causing them injury in order
2 to increase company profits at the expense of these employees.

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

14
15 **FOURTH CAUSE OF ACTION**

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

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

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

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

23 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
24 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
25 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
26 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
27 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
28 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 from time to time 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 from time to time. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. 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.

93. DEFENDANT further violates 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.

94. 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

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

95. 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.

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

99. 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.

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

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

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

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

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

17
18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 2802]**

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

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

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

27 An employer shall indemnify his or her employee for all necessary
28 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

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

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

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

25 ///

26 ///

27 ///

28 ///

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

As used in this article:

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

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

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

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

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

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

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

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid

1 or until an action therefor is commenced; but the wages shall not continue
2 for more than 30 days.

3 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
4 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
5 owed as required by law.

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

13 **NINTH CAUSE OF ACTION**

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

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

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

17 115. PLAINTIFF realleges and incorporates by reference, as though fully set forth
18 herein, the prior paragraphs of this Complaint.

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

1 117. PLAINTIFF, and such persons that may be added from time to time who
2 satisfy the requirements and exhaust the administrative procedures under the Private
3 Attorney General Act, brings this Representative Action on behalf of the State of California
4 with respect to himself and all individuals who are or previously were employed by
5 DEFENDANT in California and classified as non-exempt employees (“AGGRIEVED
6 EMPLOYEES”) during the time period of March 17, 2021 until a date as determined by the
7 Court (the "PAGA PERIOD").

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

16 119. The policies, acts and practices heretofore described were and are an unlawful
17 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
18 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
19 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
20 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
21 required expenses, and (f) failed to provide wages when due, all in violation of the
22 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
23 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
24 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
25 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
26

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

1 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
2 General Act of 2004 as the representative of the State of California for the illegal conduct
3 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

4 120. All of the conduct and violations alleged herein occurred during the PAGA
5 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
6 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
7 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
8 2018 AJDAR 12157 (Certified for Publication 12/19/18).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
11 severally, as follows:

12 1. On behalf of the CALIFORNIA CLASS:

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

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

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

members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

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

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

E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;

F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,

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

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

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. On all claims:

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

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

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

1 Dated: April 6, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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4 By: 
5 Norman B. Blumenthal
6 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: April 6, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By:



Norman B. Blumenthal
Attorneys for Plaintiff