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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

MAURICIO VIDES, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

ALEXANDER'S STEAKHOUSE, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV-399448

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

1. UNFAIR COMPETITION IN VIOLATION OF
CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194, 1197
& 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 510, *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; and,
7. FAILURE TO REIMBURSE EMPLOYEES FOR
REQUIRED EXPENSES IN VIOLATION OF CAL.
LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN
VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND
203;
9. FAILURE TO PROVIDE GRATUITIES IN
VIOLATION OF CAL. LAB. CODE § 351; and
10. CIVIL PENALTIES PURSUANT TO LABOR
CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a),
226.7, 227.3, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
1197.1, 1198, 2802, CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11040,
Subdivision 5(A)-(B), AND THE APPLICABLE
WAGE ORDER(S).

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT owns and operates restaurants in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from October of 2021 to
11 January 7, 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
12 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and
13 overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined
15 as all individuals who are or previously were employed by DEFENDANT in California and who were
16 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period of
17 June 24, 2018 until the date of the Court’s order of preliminary approval or November 18, 2023,
18 whichever is sooner(the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the
19 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

unlawful conduct, and all other appropriate legal and equitable relief.

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

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

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members,

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

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

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

1 Members by DEFENDANT.

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

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

1 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's
2 rule which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
3 premises during their rest period.

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

18 14. During the CALIFORNIA CLASS period, pursuant to DEFENDANT's company
19 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to gratuities
20 left for them by customers to DEFENDANT's agents who provided no service to the customers that
21 resulted in the gratuity. DEFENDANT routinely added service charges to its food and beverage banquet
22 bills. These service charges were in the form of automatic charges which customers are required to pay,
23 and which reasonably appear to be gratuities for the service staff. It is typical and customary in the
24 hospitality industry that establishments impose gratuity charges in the range of 18%-22% of the food
25 and beverage bill. Thus, when customers have paid these charges, it is reasonable for them to have
26 believed they were gratuities to be paid to the service staff. Indeed, because many of these charges are
27 depicted to customers, and the custom in the food and beverage industry that gratuities in the range of
28 18%-22% are paid for food and beverage service, customers have paid these charges reasonably

1 believing they were remitted to the service staff. However, DEFENDANT has not remitted the total
2 proceeds of these gratuities to the non-managerial employees who serve the food and beverages.
3 Instead, DEFENDANT has a policy and practice of retaining for itself a portion of these gratuities
4 and/or using a portion of these gratuities to pay managers or other non-service employees. As a result,
5 PLAINTIFF and CALIFORNIA CLASS Members have not received the total proceeds of the gratuities,
6 to which they are entitled to under California law.

7 15. DEFENDANT is generally in the business of owning and operating restaurants. In
8 addition, DEFENDANT also provides services to large groups, such as wedding parties and other
9 banquet events. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA
10 CLASS Members were in the “chain of service” and earned gratuities based on their service for their
11 customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit portions
12 of their gratuities, which said gratuities were kept by DEFENDANT and their agents who were not in
13 the chain of service from which the gratuity resulted. PLAINTIFF and other CALIFORNIA CLASS
14 Members contend that any gratuities kept by DEFENDANT were illegal and in violation of California
15 law because PLAINTIFF and other CALIFORNIA CLASS Members, not DEFENDANT, provided the
16 service for to whom the gratuity should have been paid.

17 16. California Labor Code § 351 establishes the requirements for an employer regarding the
18 payment of gratuities. Specifically, gratuities are the sole property of the employees. California Labor
19 Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any
20 portion of a gratuity. California Labor Code § 350(e) defines the term “gratuity” as including any
21 money that has been paid or given or left for an employee by a patron of a business over and above the
22 actual amount due the business for services rendered or for goods, food, drink or articles sold or served
23 to such patron. Labor Code § 353 requires employers to keep accurate records of all gratuities they
24 receive, directly or indirectly.

25 17. Although tip pooling is not expressly prohibited by the Labor Code, employees who
26 mandate tip pooling must only distribute pooled tips to employees in the “chain of service.” By
27 distributing tips to DEFENDANT directly and to their agents who were not in the “chain of service,”
28 DEFENDANT has violated and continue to violate the legal requirements for handling pooled tips and

1 violated the holding in *O'Grady v. Merchant Exchange Productions, Inc.*, No. A148513 (Court of
2 Appeals of California, First District, Division Two.)

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

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

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

1 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
amount unlawfully withheld.

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

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

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

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

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

24 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect
25 or receive from an employee any part of wages theretofore paid by said employer to said employee."
26 DEFENDANT failed to pay all compensation due to PLAINTIFF and other CALIFORNIA LABOR
27 SUB-CLASS Members, made unlawful deductions from compensation payable to PLAINTIFF and
28 CALIFORNIA LABOR SUB-CLASS Members, failed to disclose all aspects of the deductions from

1 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, and thereby
2 failed to pay these employees all wages due at each applicable pay period and upon termination.
3 PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
4 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

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

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

24 28. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required
25 off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code
26 and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT
27 did not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF
28 and also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature

1 of the work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of
2 PLAINTIFF's duties for the legally required off-duty meal periods. DEFENDANT also failed to pay
3 PLAINTIFF all of her earned commissions due to her when she left employment with DEFENDANT
4 in October of 2021. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally
5 required meal periods is evidenced by DEFENDANT's business records. The amount in controversy
6 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

7 **JURISDICTION AND VENUE**

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

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

17 **THE CALIFORNIA CLASS**

18 31. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
20 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
21 are or previously were employed by DEFENDANT in California and who were classified as non-
22 exempt employees (the "CALIFORNIA CLASS") at any time during the period of June 24, 2018 until
23 the date of the Court's order of preliminary approval or November 18, 2023, whichever is sooner (the
24 "CALIFORNIA 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 32. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
27 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.
28

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

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

15 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
16 Members is impracticable.

17 36. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law
18 by:

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

28 37. This Class Action meets the statutory prerequisites for the maintenance of a Class

1 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

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

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

- 27 (a) Without class certification and determination of declaratory, injunctive, statutory
28 and other legal questions within the class format, prosecution of separate actions

1 by individual members of the CALIFORNIA CLASS will create the risk of:

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

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

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

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

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

28 1) The interests of the members of the CALIFORNIA CLASS in

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

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

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

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

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

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

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

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

business records of DEFENDANT; 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 CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

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

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

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

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

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

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

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

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

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

1 Cal. Lab. Code § 1194;

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

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

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

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

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

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

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

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

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

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

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

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

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

that would create the risk of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3
4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

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

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

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

10 50. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §
11 17021.

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

16 Any person who engages, has engaged, or proposes to engage in unfair competition may
17 be enjoined in any court of competent jurisdiction. The court may make such orders or
18 judgments, including the appointment of a receiver, as may be necessary to prevent the
19 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.

20 Cal. Bus. & Prof. Code § 17203.

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

28 53. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in

1 that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
2 substantially injurious to employees, and were without valid justification or utility for which this Court
3 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
4 Professions Code, including restitution of wages wrongfully withheld.

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

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

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

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

27 58. PLAINTIFF further demands on behalf of himself and each member of the
28 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid

1 rest period was not timely provided as required by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 17 **THIRD CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

19 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **FOURTH CAUSE OF ACTION**

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

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

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

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

26 95. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed
27 to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
28

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

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

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

22 **FIFTH CAUSE OF ACTION**

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

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

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

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

1 Complaint.

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

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

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

20 **SIXTH CAUSE OF ACTION**

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

22 **[Cal. Lab. Code § 226]**

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

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

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

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

104. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

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

1 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of
2 the CALIFORNIA LABOR SUB-CLASS herein).

3
4 **SEVENTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 2802]**

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

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

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

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

15 108. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
16 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
17 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
18 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
19 CLASS members for expenses which included, but were not limited to, costs related to using their
20 personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically,
21 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by
22 DEFENDANT to use their personal cellular phones in order to perform work related job tasks.
23 DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA
24 LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for
25 DEFENDANT within the course and scope of their employment for DEFENDANT. These
26 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
27 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
28 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

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

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

8 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

17 As used in this article:

18 (a) "Wages" includes all amounts for labor performed by employees of every
19 description, whether the amount is fixed or ascertained by the standard of time,
20 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.

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

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

24 If an employee not having a written contract for a definite period quits his or her
25 employment, his or her wages shall become due and payable not later than 72
26 hours thereafter, unless the employee has given 72 hours previous notice of his
27 or her intention to quit, in which case the employee is entitled to his or her
28 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.

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

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

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

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

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

NINTH CAUSE OF ACTION

For Failure To Pay Statutory Gratuities

[Cal. Lab. Code §§ 351, *et seq.*]

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

117. 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.

118. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial banquet service employees the total proceeds of gratuities added to banquet customers' bills constitutes a violation of California Labor Code Section 351. This violation is enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANT's conduct constitutes unlawfully, unfair, and/or fraudulent business acts or practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting to the non-

1 managerial service employees the total gratuities that were charged to customers.

2 119. As a proximate result of the aforementioned violations, PLAINTIFF and
3 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
4 proof at trial, including the loss of gratuities to which they were entitled. and seek all wages earned
5 and due, interest, penalties, expenses and costs of suit.

6
7 **TENTH CAUSE OF ACTION**

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

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

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

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

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

22 122. PLAINTIFF, and such persons that may be added from time to time who satisfy the
23 requirements and exhaust the administrative procedures under the Private Attorney General Act,
24 brings this Representative Action on behalf of the State of California with respect to himself and all
25 individuals who are or previously were employed by DEFENDANT in California and classified as
26 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of March 10, 2021
27 until the date of the Court's order of preliminary approval or November 18, 2023, whichever is
28 sooner (the "PAGA PERIOD").

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

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

21 125. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
22 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during
23 the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected the
24 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504
25 (2018).

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
3 as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

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

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

1 applicable IWC Wage Order;

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

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

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

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

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

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

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 cost of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

19
20 Dated: August 3, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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23 By: /s/ Nicholas J. De Blouw
24 Nicholas J. De Blouw
25 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: August 3, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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