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Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JAIME RODRIGUEZ and NOHELI SAPP,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiff,

vs.

WAWANESA GENERAL INSURANCE
COMPANY, a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2022-00020811-CU-OE-CTL

FIRST AMENDED CLASS ACTION COMPLAINT
FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*;
11. RETALIATION AND WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and
12. RETALIATION AND WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;

DEMAND FOR A JURY TRIAL

1 Plaintiffs Jaime Rodriguez and Noheli Sapp (“PLAINTIFFS”), individuals, on behalf of
2 themselves and all other similarly situated current and former employees allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge,
4 the following:

5
6 **THE PARTIES**

7 1. Defendant Wawanesa General Insurance Company (“DEFENDANT”) is a
8 Corporation that at all relevant times mentioned herein conducted and continues to conduct
9 substantial business in the state of California.

10 2. DEFENDANT operates an insurance company.

11 3. Plaintiff Rodriguez was employed by DEFENDANT in California from January
12 of 2017 to February 1, 2022 and was at all times classified by DEFENDANT as a non-exempt
13 employee entitled to the legally required meal and rest periods and payment of minimum and
14 overtime wages due for all time worked.

15 4. Plaintiff Sapp was employed by DEFENDANT in California from September of
16 2019 to June 21, 2022 and was at all times classified by DEFENDANT as a non-exempt
17 employee entitled to the legally required meal and rest periods and payment of minimum and
18 overtime wages due for all time worked.

19 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
20 class, defined as all individuals who are or previously were employed by DEFENDANT in
21 California, including any employees staffed with DEFENDANT by a third party, and classified
22 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
23 beginning June 1, 2018 and ending on June 20, 2023 (the “CALIFORNIA CLASS PERIOD”).
24 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under
25 five million dollars (\$5,000,000.00).

26 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
27 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
28 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and

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

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

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

26 27 **THE CONDUCT**

28 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was

1 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
2 meaning the time during which an employee is subject to the control of an employer, including
3 all the time the employee is suffered or permitted to work. DEFENDANT requires
4 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the
5 time they are under DEFENDANT's control. Among other things, DEFENDANT requires
6 PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS' off-duty
7 meal break. PLAINTIFFS are from time to time interrupted by work assignments while clocked
8 out for what should be PLAINTIFFS' off-duty meal break. PLAINTIFFS and CALIFORNIA
9 CLASS Members also worked off the clock with respect to time spent undergoing mandatory
10 drug testing or any other testing and/or examination required as a condition of employment.
11 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
12 practice of rounding the actual time worked and recorded by PLAINTIFFS and CALIFORNIA
13 CLASS Members, always to the benefit of DEFENDANT, so that during the course of their
14 employment, PLAINTIFFS and CALIFORNIA CLASS Members are paid less than they would
15 have been paid had they been paid for actual recorded time rather than "rounded" time. As a
16 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit minimum wage,
17 overtime wage compensation, and off-duty meal breaks by working without their time being
18 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
19 and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time
20 worked, is evidenced by DEFENDANT's business records.

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

25 11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
26 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
27 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
28 performance for DEFENDANT. The non-discretionary incentive program provided all

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

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

24 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
25 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
26 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
27 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
28 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes

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

16 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
17 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
18 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
19 DEFENDANT was required to pay PLAINTIFFS and other CALIFORNIA CLASS Members
20 for all time worked, meaning the time during which an employee was subject to the control of
21 an employer, including all the time the employee was permitted or suffered to permit this work.
22 DEFENDANT required these employees to work off the clock without paying them for all the
23 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
24 known that PLAINTIFFS and the other members of the CALIFORNIA CLASS were under
25 compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS
26 Members forfeited time worked by working without their time being accurately recorded and
27 without compensation at the applicable minimum wage and overtime wage rates. To the extent
28 that the time worked off the clock does not qualify for overtime premium payment,

1 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
2 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

25 17. DEFENDANT from time to time failed to pay PLAINTIFFS and members of the
26 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
27 payroll period in accordance with Cal. Lab. Code § 204(d).

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

1 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS
2 Members at their base rates of pay.

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

7 20. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
8 the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned
9 non-discretionary incentive wages which increased their regular rate of pay. However, when
10 sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and members of the
11 CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay, as required under
12 Cal. Lab. Code Section 246.

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

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

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

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

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

1 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
2 PLAINTIFFS with the legally required meal periods is evidenced by DEFENDANT's business
3 records. The amount in controversy for PLAINTIFFS individually does not exceed the sum or
4 value of \$75,000.

5 **JURISDICTION AND VENUE**

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

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

15 **THE CALIFORNIA CLASS**

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

25 29. To the extent equitable tolling operates to toll claims by the CALIFORNIA
26 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
27
28

1 accordingly.

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

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

18 32. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
19 CLASS Members is impracticable.

20 33. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
21 law by:

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

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

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

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

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

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

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

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

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

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

24 1) With respect to the First Cause of Action, the final relief on behalf
25 of the CALIFORNIA CLASS sought does not relate exclusively to
26 restitution because through this claim PLAINTIFFS seek
27 declaratory relief holding that the DEFENDANT's policy and
28 practices constitute unfair competition, along with declaratory

1 relief, injunctive relief, and incidental equitable relief as may be
2 necessary to prevent and remedy the conduct declared to constitute
3 unfair competition;

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

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

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

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

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

28 3) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA CLASS Members will avoid asserting
2 their legal rights out of fear of retaliation by DEFENDANT, which
3 may adversely affect an individual's job with DEFENDANT or
4 with a subsequent employer, the Class Action is the only means to
5 assert their claims through a representative; and,

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

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

- 13 (a) The questions of law and fact common to the CALIFORNIA CLASS
14 predominate over any question affecting only individual CALIFORNIA
15 CLASS Members because the DEFENDANT's employment practices are
16 applied with respect to the CALIFORNIA CLASS;
- 17 (b) A Class Action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the CALIFORNIA
19 CLASS because in the context of employment litigation a substantial
20 number of individual CALIFORNIA CLASS Members will avoid
21 asserting their rights individually out of fear of retaliation or adverse
22 impact on their employment;
- 23 (c) The members of the CALIFORNIA CLASS are so numerous that it is
24 impractical to bring all members of the CALIFORNIA CLASS before the
25 Court;
- 26 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
27 able to obtain effective and economic legal redress unless the action is
28 maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations and
3 other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
10 to the CALIFORNIA CLASS, thereby making final class-wide relief
11 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 12 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
13 the business records of DEFENDANT; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to bring
15 a efficient and rapid conclusion to all litigation of all wage and hour
16 related claims arising out of the conduct of DEFENDANT as to the
17 members of the CALIFORNIA CLASS.

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

23
24 **THE CALIFORNIA LABOR SUB-CLASS**

25 38. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
26 Eighth and Ninth Causes of Action on behalf of a California sub-class, defined as all members
27 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
28 California, including any employees staffed with DEFENDANT by a third party, and classified

1 as non exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the
2 period three (3) years prior to the filing of the complaint and ending on the date as determined
3 by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of
4 Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
5 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 27 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
28 compensation due to members of the CALIFORNIA LABOR SUB-

1 CLASS for missed meal and rest breaks in violation of the California
2 Labor Code and California regulations and the applicable California Wage
3 Order;

4 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with accurate
6 itemized wage statements;

7 (c) Whether DEFENDANT has engaged in unfair competition by the
8 above-listed conduct;

9 (d) The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUB-CLASS; and,

11 (e) Whether DEFENDANT's conduct was willful.

12 43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
13 under California law by:

14 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
15 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
16 CLASS all wages due for overtime worked, for which DEFENDANT is
17 liable pursuant to Cal. Lab. Code § 1194;

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

22 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
23 the members of the CALIFORNIA LABOR SUB-CLASS with an
24 accurate itemized statement in writing showing the corresponding correct
25 amount of wages earned by the employee;

26 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR
28 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)

minute meal breaks and the legally required off-duty rest breaks;

- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
- (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, were non-exempt employees paid on an hourly basis who were subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members

1 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
2 identically harmed by the same unlawful, deceptive, and unfair
3 misconduct engaged in by DEFENDANT; and,

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

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

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

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

- 27 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
28 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.

46. 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
LABOR SUB-CLASS because in the context of employment litigation a
substantial number of individual CALIFORNIA LABOR SUB-CLASS
Members will avoid asserting their rights individually out of fear of
retaliation or adverse impact on their employment;

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

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

25 //

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27 //

28 //

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

24 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
26 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
27 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
28 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer

1 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
2 engage in these unlawful and unfair business practices.

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

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

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

8 **and Against All Defendants)**

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

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

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

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

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

24 67. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
26 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
27 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS.

1 68. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
2 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
3 a policy and practice that denies accurate compensation to PLAINTIFFS and the other members
4 of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

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

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

26 73. DEFENDANT knew or should have known that PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
28 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,

1 to not pay employees for their labor as a matter of company policy, practice and procedure, and
2 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
3 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

23
24 **THIRD CAUSE OF ACTION**

25 **For Failure To Pay Overtime Compensation**

26 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

24 82. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
25 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
26 a policy and practice that failed to accurately record overtime worked by PLAINTIFFS and
27 other CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime

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

3 83. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
5 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
6 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
7 of the California Labor Code, the Industrial Welfare Commission requirements and other
8 applicable laws and regulations.

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

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

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

23 87. DEFENDANT failed to accurately pay the PLAINTIFFS and the other members
24 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
25 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
26 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR
27 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
28 failed to accurately record and pay as evidenced by DEFENDANT's business records and

1 witnessed by employees.

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

8 89. DEFENDANT knew or should have known that PLAINTIFFS and the other
9 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
10 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
11 to not pay employees for their labor as a matter of company policy, practice and procedure, and
12 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
13 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

22 91. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
23 CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory
24 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
25 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
26 and/or overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-
27 CLASS Members who have terminated their employment, DEFENDANT's conduct also
28 violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to

1 waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf
2 of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged
3 herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other
4 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

5
6 **FOURTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

1 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11
12 **FIFTH CAUSE OF ACTION**

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

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

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

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

20 97. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
21 from time to time required to work in excess of four (4) hours without being provided ten (10)
22 minute rest periods. Further, these employees from time to time were denied their first rest
23 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
24 a first and second rest period of at least ten (10) minutes for some shifts worked of between six
25 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
26 some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other
27 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
28 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other

1 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
2 periods by DEFENDANT and DEFENDANT's managers.

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

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

12 13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

21 101. Cal. Labor Code § 226 provides that an employer must furnish employees with
22 an "accurate itemized" statement in writing showing:

- 23 (1) gross wages earned,
24 (2) total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare Commission,
28 (3) the number of piecerate 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,

1 (7) the name of the employee and his or her social security number, except that by
2 January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown on
4 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.

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

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

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

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

8
9 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

18 As used in this article:

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

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

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

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

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

1 shall be entitled to receive payment by mail if he or she so requests and
2 designates a mailing address. The date of the mailing shall constitute the date
3 of payment for purposes of the requirement to provide payment within 72
4 hours of the notice of quitting.

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

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

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

14 114. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
15 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
16 owed as required by law.

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

23 **NINTH CAUSE OF ACTION**

24 **For Failure to Pay Sick Pay Wages**

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

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

27 **and Against All Defendants)**

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

117. Cal Lab. Code § 233 provides that an employer must permit an employee to

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

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

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

1 later than the payday for the next regular payroll period after accrued sick leave is used as paid
2 sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
3 employee, wages earned and unpaid at the time of discharge are due and payable immediately.
4 Cal. Lab. Code § 202 provides that an employee is entitled to receive all unpaid wages no later
5 than 72 hours after an employee quits his or her employment, unless the employee has given
6 72-hour notice of his or her intention to quit, in which case the employee is entitled to his or her
7 wages at the time of quitting. The Labor Code penalizes untimely payments. For example, Cal.
8 Lab. Code § 203 provides that if an employer willfully fails to pay wages owed in accordance
9 with Cal. Lab. Code §§ 201-202, then the wages of the employee shall continue as a penalty
10 from the due date, and at the same rate until paid, but the wages shall not continue for more than
11 thirty (30) days. Likewise, Cal. Lab. Code § 210 provides penalties for violations of Cal. Lab.
12 Code § 204 and untimely payments during employment. Under Cal. Lab. Code §§ 203, 210 and
13 218, employees may sue to recover applicable penalties.

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

27 121. Such a pattern, practice, and uniform administration of corporate policy is
28 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-

1 CLASS to underpaid sick pay wages, including interest thereon, applicable penalties, attorney's
2 fees, and costs of suit.

3
4 **TENTH CAUSE OF ACTION**

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

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

7 **(By Plaintiff Rodriguez and Against All Defendants)**

8 122. Plaintiff Rodriguez realleges and incorporates by this reference, as though fully
9 set forth herein, the prior paragraphs of this Complaint.

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

20 124. Plaintiff Rodriguez, and such persons that may be added from time to time who
21 satisfy the requirements and exhaust the administrative procedures under the Private Attorney
22 General Act, brings this Representative Action on behalf of the State of California with respect
23 to himself and all individuals who are or previously were employed by DEFENDANT in
24 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
25 the time period of April 8, 2021 until June 20, 2023 (the "PAGA PERIOD").

26 125. On April 28, 2022, Plaintiff Rodriguez gave written notice by electronic mail to
27 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
28 employer of the specific provisions of this code alleged to have been violated as required by

1 Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein.
2 The statutory waiting period for Plaintiff Rodriguez to add these allegations to the Complaint
3 has expired. As a result, pursuant to Section 2699.3, Plaintiff Rodriguez may now pursue a
4 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
5 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

6 126. The policies, acts and practices heretofore described were and are an unlawful
7 business act or practice because DEFENDANT (a) failed to provide Plaintiff Rodriguez and the
8 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
9 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
10 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
11 expenses, and (f) failed to pay wages when due, all in violation of the applicable Labor Code
12 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246,
13 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
14 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
15 1070(14) (Failure to Provide Seating), and Violation of the applicable Industrial Welfare
16 Commission Wage Order(s), and thereby gives rise to civil penalties as a result of such
17 conduct.¹ Plaintiff Rodriguez hereby seeks recovery of civil penalties as prescribed by the
18 Labor Code Private Attorney General Act of 2004 as the representative of the State of
19 California for the illegal conduct perpetrated on Plaintiff Rodriguez and the AGGRIEVED
20 EMPLOYEES.

21 127. All of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
23 Plaintiff Rodriguez during the PAGA PERIOD, Plaintiff Rodriguez seeks penalties for those
24 violations that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks*
25 *Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

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

1 **ELEVENTH CAUSE OF ACTION**

2 **For Retaliation and Wrongful Termination in Violation of Public Policy**

3 **(By Plaintiff Rodriguez Against All Defendants)**

4 128. Plaintiff Rodriguez realleges and incorporates by this reference, as though fully
5 set forth herein, the prior paragraphs of this Complaint.

6 129. Plaintiff Rodriguez's wrongful termination in February of 2022 was for a
7 pretextual reason(s) to disguise DEFENDANT's unlawful employment practices directed at
8 Plaintiff Rodriguez.

9 130. At all relevant times, Labor Code section 1102.5 was in effect and was binding
10 on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee,
11 including Plaintiff Rodriguez, for raising complaints of illegality and/or belief that the employee
12 may disclose illegality and/or for requesting protected leave from work due to mental/physical
13 disability.

14 131. Plaintiff Rodriguez made numerous complaints to DEFENDANT, including
15 regarding DEFENDANT's potential violations of law and its own internal policies. Plaintiff
16 Rodriguez complained to DEFENDANT regarding DEFENDANT'S payroll practices,
17 including, but not limited to, not paying proper wages that negatively affected Plaintiff
18 Rodriguez's pay and employment with DEFENDANT. Shortly thereafter, DEFENDANT
19 terminated Plaintiff Rodriguez's employment in violation of various fundamental public
20 policies underlying both state and federal laws. Because Plaintiff Rodriguez was believed to be
21 willing to raise complaints, and DEFENDANT retaliated against Plaintiff Rodriguez by taking
22 adverse employment actions, including employment termination, against Plaintiff Rodriguez.
23 As a direct consequence of Plaintiff Rodriguez's complaints to DEFENDANT, DEFENDANT
24 retaliated against Plaintiff Rodriguez by terminating Plaintiff Rodriguez's employment in
25 February of 2022.

26 132. As a proximate result of DEFENDANT's willful, knowing, and intentional
27 actions, Plaintiff Rodriguez has suffered and continues to suffer humiliation, emotional distress,
28 and mental and physical pain and anguish, all to his damage in a sum according to proof.

133. As a result of DEFENDANT'S adverse employment actions against Plaintiff Rodriguez, Plaintiff Rodriguez was suffered general and special damages in sums according to proof.

134. DEFENDANT's conduct was committed intentionally, in a malicious and oppressive, and fraudulent manner, entitling Plaintiff Rodriguez to punitive damages against DEFENDANT.

TWELFTH CAUSE OF ACTION

For Retaliation and Wrongful Termination in Violation of Public Policy

(By Plaintiff Sapp Against All Defendants)

135. Plaintiff Sapp realleges and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

136. Plaintiff Sapp's wrongful termination in June of 2022 was for a pretextual reason(s) to disguise DEFENDANT's unlawful employment practices directed at Plaintiff Sapp.

137. Plaintiff Sapp made numerous complaints to DEFENDANT, including regarding DEFENDANT's potential violations of law and its own internal policies. Plaintiff Sapp complained to DEFENDANT regarding DEFENDANT'S wage and hour practices, including, but not limited to, not paying proper wages for time worked that negatively affected Plaintiff Sapp's pay and employment with DEFENDANT. Shortly thereafter, DEFENDANT terminated Plaintiff Sapp's employment in violation of various fundamental public policies underlying both state and federal laws. Because Plaintiff Sapp was believed to be willing to raise complaints, and DEFENDANT retaliated against Plaintiff Sapp by taking adverse employment actions, including employment termination, against Plaintiff Sapp. As a direct consequence of Plaintiff Sapp's complaints to DEFENDANT, DEFENDANT retaliated against Plaintiff Sapp by terminating Plaintiff Sapp's employment in June of 2022.

138. As a proximate result of DEFENDANT’S willful, knowing, and intentional conduct, Plaintiff Sapp has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to Plaintiff Sapp’s damage in a sum according to

1 proof.

2 139. As a result of DEFENDANT's adverse employment actions, Plaintiff Sapp has
3 suffered general and special damages in sums according to proof.

4 140. DEFENDANT's misconduct was committed intentionally, in a malicious,
5 oppressive, and fraudulent manner entitling Plaintiff Sapp to punitive damages against
6 DEFENDANT.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
10 severally, as follows:

11 1. On behalf of the CALIFORNIA CLASS:

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

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

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

1 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
2 at the statutory rate;

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

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

10 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
11 1197;

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

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

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

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

22 4. On all claims:

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

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

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

1 Dated: June 29, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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DEMAND FOR A JURY TRIAL

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

Dated: June 29, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

**BLUMENTHAL NORDREHAUG
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Rodriguez v. Wawanesa Gen Ins Co.
San Diego County Superior Court
Case No. 37-2022-00020811-CU-OE-CTL

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Gerardo Galaviz, am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California, 92037.

On June 29, 2023, I served the document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT

— (BY ELECTRONIC SERVICE VIA ONE LEGAL ONLY) Pursuant to CCP §1010.6, the document(s) referenced above is/are served through One Legal at <https://www.onelegal.com/> addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the One Legal Receipt Page/Confirmation will be maintained with the original document(s) in this office.

X (ELECTRONIC/E-MAIL): Pursuant to CCP §§ 1010.6 and 1013(g), by e-mailing the document(s) from the following e-mail address: gerardo@Bamlawca.com to the persons at the confirmed e-mail address(es) below.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 29, 2023, at San Diego, California.



Gerardo Galaviz