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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

TAMIKA WALKER and SHANNON PEETE, individuals,
on behalf of themselves and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

DJO, LLC, a Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 22CV400335

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

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; and,
10. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

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

10 2. DEFENDANT provides orthopedic devices. The Company offers products for
11 regeneration, rehabilitation, pain management, and physical therapy as well as develops,
12 manufactures, and distributes a broad range of surgical reconstructive implant products.

13 3. Plaintiff Walker was employed by DEFENDANT in California from September
14 of 2019 to April of 2022 and was at all times classified by DEFENDANT as a non-exempt
15 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
16 payment of minimum and overtime wages due for all time worked.

17 3. Plaintiff Peete was employed by DEFENDANT in California from September of
18 2019 to April of 2022 and was at all times classified by DEFENDANT as a non-exempt
19 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
20 payment of minimum and overtime wages due for all time worked.

21 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California
22 class, defined as all individuals who currently or previously have worked for DEFENDANT in
23 California, including both DEFENDANT’s employees and temporary workers employed by
24 third-party staffing agencies and assigned to work for DEFENDANT, who were classified as
25 non-exempt (the “CALIFORNIA CLASS”) during the period from August 2, 2018 to July 11,
26 2023(the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate
27 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).
28

1 5. PLAINTIFFS bring this Class Action on behalf of themselves and a
2 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
3 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's
4 policy and practice which failed to lawfully compensate these employees. DEFENDANT's
5 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
6 whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and the
7 other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
8 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
9 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA
10 CLASS who have been economically injured by DEFENDANT's past and current unlawful
11 conduct, and all other appropriate legal and equitable relief.

12 6. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
14 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious
15 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
16 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
17 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
18 information and belief allege, that the Defendants named in this Complaint, including DOES
19 1 through 50, inclusive, are responsible in some manner for one or more of the events and
20 happenings that proximately caused the injuries and damages hereinafter alleged.

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

1
2 **THE CONDUCT**

3 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
4 was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time
5 worked, meaning the time during which an employee is subject to the control of an
6 employer, including all the time the employee is suffered or permitted to work.
7 DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work
8 without paying them for all the time they are under DEFENDANT's control. Among other
9 things, DEFENDANT required PLAINTIFFS to work while clocked out during what is
10 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time
11 interrupted by work assignments while clocked out for what should have been
12 PLAINTIFFS' off-duty meal break. PLAINTIFFS and CALIFORNIA CLASS Members
13 also worked off the clock with respect to time spent undergoing mandatory drug testing or
14 any other testing and/or examination required as a condition of employment. DEFENDANT,
15 as a matter of established company policy and procedure, administers a uniform practice of
16 rounding the actual time worked and recorded by PLAINTIFFS and CALIFORNIA CLASS
17 Members, always to the benefit of DEFENDANT, so that during the course of their
18 employment, PLAINTIFFS and CALIFORNIA CLASS Members were paid less than they
19 would have been paid had they been paid for actual recorded time rather than "rounded"
20 time. Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFFS and
21 CALIFORNIA CLASS Members to perform work off the clocking that DEFENDANT, as a
22 condition of employment, required these employees to submit to mandatory temperature
23 checks and symptom questionnaires for COVID-19 screening prior to clocking into
24 DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFFS and other
25 CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and
26 off-duty meal breaks by working without their time being correctly recorded and without
27 compensation at the applicable rates. DEFENDANT's policy and practice not to pay
28

1 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced
2 by DEFENDANT's business records.

3 9. State and federal law provides that employees must be paid overtime and meal
4 and rest break premiums at one-and-one-half times their "regular rate of pay."

5 PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an hourly rate
6 plus incentive pay that is tied to specific elements of an employee's performance.

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

22 11. As a result of their rigorous work schedules, PLAINTIFFS and other
23 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
24 off duty meal breaks and were not fully relieved of duty for their meal periods.
25 PLAINTIFFS and other CALIFORNIA CLASS Members were required from time to time
26 to perform work as ordered by DEFENDANT for more than five (5) hours during some
27 shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
28 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal

1 period for some workdays in which these employees were required by DEFENDANT to
2 work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the
3 meal period times to avoid paying penalties to PLAINTIFFS and other CALIFORNIA
4 CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS
5 therefore forfeit meal breaks without additional compensation and in accordance with
6 DEFENDANT's corporate policy and practice.

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

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

17 14. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
18 other members of the CALIFORNIA CLASS with complete and accurate wage statements
19 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
20 Code § 226 provides that every employer shall furnish each of his or her employees with an
21 accurate itemized wage statement in writing showing, among other things, gross wages
22 earned and all applicable hourly rates in effect during the pay period and the corresponding
23 amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA CLASS
24 Members were paid on an hourly basis. As such, the wage statements should reflect all
25 applicable hourly rates during the pay period and the total hours worked, and the applicable
26 pay period in which the wages were earned pursuant to California Labor Code Section
27 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and other
28 CALIFORNIA CLASS Members failed to identify such information. More specifically, the

1 wage statements failed to identify the accurate total hours worked each pay period. When
2 the hours shown on the wage statements were added up, they did not equal the actual total
3 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Additionally,
4 DEFENDANT violates Cal. Lab. Code Section 226(a)(8) by failing to list the correct name
5 of the legal entity that employed PLAINTIFFS and other CALIFORNIA CLASS Members.
6 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
7 PLAINTIFFS an itemized wage statement that lists all the requirements under California
8 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS
9 and the other members of the CALIFORNIA CLASS with wage statements which violated
10 Cal. Lab. Code § 226.

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

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

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

22 17. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
23 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
24 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
25 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
26 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA
27 CLASS Members at their base rates of pay.

28 18. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt

1 employees be calculated by dividing the employee's total wages, not including overtime
2 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
3 days of employment.

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

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

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

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

11 23. 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
15 associated with the use of their personal cellular phones for DEFENDANT's benefit.
16 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
17 DEFENDANT to use their personal cellular phones. As a result, in the course of their
18 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
19 CLASS incurred unreimbursed business expenses which included, but were not limited to,
20 costs related to the use of their personal cellular phones all on behalf of and for the benefit
21 of DEFENDANT.

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

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

5 **JURISDICTION AND VENUE**

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

10 26. 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
12 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and
13 facilities in this County and/or conducts substantial business in this County, and (ii)
14 committed the wrongful conduct herein alleged in this County against members of the
15 CALIFORNIA CLASS.

16 **THE CALIFORNIA CLASS**

17 27. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
18 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
19 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
20 California class, defined as all individuals who currently or previously have worked for
21 DEFENDANT in California, including both DEFENDANT's employees and temporary
22 workers employed by third-party staffing agencies and assigned to work for DEFENDANT,
23 who were classified as non-exempt (the "CALIFORNIA CLASS") during the period from
24 August 2, 2018 to July 11, 2023 (the "CALIFORNIA CLASS PERIOD"). The amount in
25 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
26 million dollars (\$5,000,000.00).
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1 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

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

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

20 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

22 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under
23 California law by:

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

1 minimum wages owed and overtime wages owed for work performed
2 by these employees; and,

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

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

- 8 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
9 that the joinder of all such persons is impracticable and the disposition
10 of their claims as a class will benefit the parties and the Court;
11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
12 issues that are raised in this Complaint are common to the
13 CALIFORNIA CLASS will apply to every member of the
14 CALIFORNIA CLASS;
15 (c) The claims of the representative PLAINTIFFS are typical of the claims
16 of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all
17 the other members of the CALIFORNIA CLASS, were classified as
18 non-exempt employees paid on an hourly basis who were subjected to
19 the DEFENDANT's deceptive practice and policy which failed to
20 provide the legally required meal and rest periods to the CALIFORNIA
21 CLASS and thereby underpaid compensation to PLAINTIFFS and
22 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
23 result of DEFENDANT's employment practices. PLAINTIFFS and the
24 members of the CALIFORNIA CLASS were and are similarly or
25 identically harmed by the same unlawful, deceptive and unfair
26 misconduct engaged in by DEFENDANT; and,
27 (d) The representative PLAINTIFFS will fairly and adequately represent
28 and protect the interest of the CALIFORNIA CLASS, and have

1 retained counsel who are competent and experienced in Class Action
2 litigation. There are no material conflicts between the claims of the
3 representative PLAINTIFFS and the members of the CALIFORNIA
4 CLASS that would make class certification inappropriate. Counsel for
5 the CALIFORNIA CLASS will vigorously assert the claims of all
6 CALIFORNIA CLASS Members.

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

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

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

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

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

27 1) With respect to the First Cause of Action, the final relief on
28 behalf of the CALIFORNIA CLASS sought does not relate

1 exclusively to restitution because through this claim
2 PLAINTIFFS seek declaratory relief holding that the
3 DEFENDANT's policy and practices constitute unfair
4 competition, along with declaratory relief, injunctive relief, and
5 incidental equitable relief as may be necessary to prevent and
6 remedy the conduct declared to constitute unfair competition;

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

- 13 1) The interests of the members of the CALIFORNIA CLASS in
14 individually controlling the prosecution or defense of separate
15 actions in that the substantial expense of individual actions will
16 be avoided to recover the relatively small amount of economic
17 losses sustained by the individual CALIFORNIA CLASS
18 Members when compared to the substantial expense and burden
19 of individual prosecution of this litigation;
- 20 2) Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:
 - 22 A. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA CLASS, which
24 would establish incompatible standards of conduct for the
25 DEFENDANT; and/or,
 - 26 B. Adjudications with respect to individual members of the
27 CALIFORNIA CLASS would as a practical matter be
28 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 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.

35. 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 CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (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 CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

25 36. DEFENDANT maintains records from which the Court can ascertain and
26 identify by job title each of DEFENDANT's employees who have been intentionally
27 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
28

1 PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of
2 similarly situated employees when they have been identified.

3
4 **THE CALIFORNIA LABOR SUB-CLASS**

5 37. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
6 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
7 of the CALIFORNIA CLASS who currently or previously have worked for DEFENDANT in
8 California, including both DEFENDANT's employees and temporary workers employed by
9 third-party staffing agencies and assigned to work for DEFENDANT, who were classified
10 as non-exempt (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period
11 from August 2, 2018 to July 11, 2023(the "CALIFORNIA LABOR SUB-CLASS
12 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
13 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
14 dollars (\$5,000,000.00).

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

27 39. DEFENDANT maintains records from which the Court can ascertain and
28

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

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

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

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

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

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

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

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

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

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
2 issues that are raised in this Complaint are common to the
3 CALIFORNIA LABOR SUB-CLASS and will apply to every member
4 of the CALIFORNIA LABOR SUB-CLASS;
- 5 (c) The claims of the representative PLAINTIFFS are typical of the claims
6 of each member of the CALIFORNIA LABOR SUB-CLASS.
7 PLAINTIFFS, like all the other members of the CALIFORNIA
8 LABOR SUB-CLASS, were non-exempt employees paid on an hourly
9 basis who was subjected to the DEFENDANT's practice and policy
10 which failed to pay the correct amount of wages due to the
11 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained
12 economic injury as a result of DEFENDANT's employment practices.
13 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
14 CLASS were and are similarly or identically harmed by the same
15 unlawful, deceptive, and unfair misconduct engaged in by
16 DEFENDANT; and,
- 17 (d) The representative PLAINTIFFS will fairly and adequately represent
18 and protect the interest of the CALIFORNIA LABOR SUB-CLASS,
19 and have retained counsel who are competent and experienced in Class
20 Action litigation. There are no material conflicts between the claims of
21 the representative PLAINTIFFS and the members of the
22 CALIFORNIA LABOR SUB-CLASS that would make class
23 certification inappropriate. Counsel for the CALIFORNIA LABOR
24 SUB-CLASS will vigorously assert the claims of all CALIFORNIA
25 LABOR SUB-CLASS Members.

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

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution
3 of separate actions by individual members of the CALIFORNIA
4 LABOR SUB-CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which
7 would establish incompatible standards of conduct for the
8 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
9 2) Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a
11 practical matter be dispositive of interests of the other members
12 not party to the adjudication or substantially impair or impede
13 their ability to protect their interests.
- 14 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
15 acted or refused to act on grounds generally applicable to the
16 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
17 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
18 whole in that DEFENDANT fails to pay all wages due. Including the
19 correct wages for all time worked by the members of the
20 CALIFORNIA LABOR SUB-CLASS as required by law;
- 21 (c) Common questions of law and fact predominate as to the members of
22 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
23 and violations of California Law as listed above, and predominate over
24 any question affecting only individual CALIFORNIA LABOR SUB-
25 CLASS Members, and a Class Action is superior to other available
26 methods for the fair and efficient adjudication of the controversy,
27 including consideration of:
28

- 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

1 treatment will obviate the need for unduly and unnecessary
2 duplicative litigation that is likely to result in the absence of
3 certification of this action pursuant to Cal. Code of Civ. Proc. §
4 382.

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

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

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of
3 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally
5 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
6 making final class-wide relief appropriate with respect to the
7 CALIFORNIA LABOR SUB-CLASS as a whole;
- 8 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
9 ascertainable from the business records of DEFENDANT. The
10 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
11 CLASS Members who worked for DEFENDANT in California at any
12 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to
14 bring a efficient and rapid conclusion to all litigation of all wage and
15 hour related claims arising out of the conduct of DEFENDANT as to
16 the members of the CALIFORNIA LABOR SUB-CLASS.

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

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

22 46. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
23 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
24 this Complaint.

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

27 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
28 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

1 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
2 unfair competition as follows:

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

11 Cal. Bus. & Prof. Code § 17203.

12 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Industrial Wage Order(s), the California Code of Regulations and the California
15 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
16 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
17 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
18 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
19 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

26 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and
27 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
28 meal and rest periods, the required amount of compensation for missed meal and rest
periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
reimburse all necessary business expenses incurred, and failed to provide Fair Labor
Standards Act overtime wages due for overtime worked as a result of failing to include non-

1 discretionary incentive compensation into their regular rates of pay for purposes of
2 computing the proper overtime pay due to a business practice that cannot be justified,
3 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
4 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
5 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
6 restitution of wages wrongfully withheld.

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

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

15 54. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of
16 each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an
17 off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
18 hour of pay for each workday in which a second off-duty meal period was not timely
19 provided for each ten (10) hours of work.

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

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

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

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

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

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

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1 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and
2 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
3 wage pay.

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

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

14 70. 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
19 that they were entitled to, constituting a failure to pay all earned wages.

20 71. 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
24 economic injury in amounts which are presently unknown to them and which will be
25 ascertained according to proof at trial.

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

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

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

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

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

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

12 82. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
14 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
15 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
16 violation of the California Labor Code, the Industrial Welfare Commission requirements
17 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
18 wage practices as alleged herein, the PLAINTIFFS and the other members of the
19 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
20 worked.

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

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

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

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

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

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

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

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

16 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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FIFTH CAUSE OF ACTION
For Failure to Provide Required Rest Periods
[Cal. Lab. Code §§ 226.7 & 512]
(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

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

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

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

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1 wage statements should reflect all applicable hourly rates during the pay period and the total
2 hours worked, and the applicable pay period in which the wages were earned pursuant to
3 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
4 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
5 such information. More specifically, the wage statements failed to identify the accurate total
6 hours worked each pay period. When the hours shown on the wage statements were added
7 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
8 Lab. Code 226(a)(2). Additionally, DEFENDANT violates Cal. Lab. Code Section
9 226(a)(8) by failing to list the correct name of the legal entity that employed PLAINTIFFS
10 and other CALIFORNIA LABOR SUB-CLASS Members. Aside, from the violations listed
11 above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage
12 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
13 DEFENDANT from time to time provided PLAINTIFFS and the other members of the
14 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
15 § 226.

16 101. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
17 Code § 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
20 of employment taxes which were not properly paid to state and federal tax authorities.
21 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
22 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
23 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
24 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
25 226, in an amount according to proof at the time of trial (but in no event more than four
26 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
27 CALIFORNIA LABOR SUB-CLASS herein).
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1 DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
2 LABOR SUB-CLASS members for these expenses as an employer is required to do under
3 the laws and regulations of California.

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

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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)**

14 106. 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.

17 107. 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
20 every description, whether the amount is fixed or ascertained by the
21 standard of time, task, piece, Commission basis, or other method of calculation.

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

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

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

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

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

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

7 111. 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
12 or until an action therefor is commenced; but the wages shall not continue
13 for more than 30 days.

14 112. 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.

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

24 **NINTH CAUSE OF ACTION**

25 **For Failure to Pay Sick Pay Wages**

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

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

28 **and Against All Defendants)**

114. 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.

115. 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
2 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
3 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
4 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
5 right to sick pay wages, which an employer must calculate and compensate based on one of
6 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
7 same manner as the regular rate of pay for the workweek in which the employee uses paid
8 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
9 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
10 total wages, not including overtime premium pay, by the employee's total hours worked in
11 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
12 233, employees may sue to recover underpaid sick pay wages as damages.

13 116. 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
17 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
18 wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS
19 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
20 hourly 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,
23 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
24 CALIFORNIA LABOR-SUB-CLASS.

25 117. 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

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

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

119. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties, attorney's fees, and costs of suit.

TENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFFS and Against All Defendants)

120. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

122. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who currently or previously have worked for DEFENDANT in California, including both DEFENDANT’s employees and temporary workers employed by third-party staffing agencies and assigned to work for DEFENDANT, who were classified as non-exempt (the “AGGRIEVED EMPLOYEES”) during the time period from August 2, 2021 to July 11, 2023(the “PAGA PERIOD”).

1 123. On May 19, 2022, PLAINTIFFS gave written notice by electronic mail to the
2 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
3 employer of the specific provisions of this code alleged to have been violated as required by
4 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
5 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
6 PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to
7 Section 2699.3, PLAINTIFFS may now commence a representative civil action under
8 PAGA pursuant to Section 2699 as the proxies of the State of California with respect to all
9 AGGRIEVED EMPLOYEES as herein defined.

10 124. The policies, acts and practices heretofore described were and are an unlawful
11 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
12 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
13 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
14 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
15 required expenses, and (f) failure to pay wages when due, all in violation of the applicable
16 Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221,
17 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
18 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
19 Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the
20 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
21 conduct.¹ PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor
22 Code Private Attorney General Act of 2004 as the representatives of the State of California
23 for the illegal conduct perpetrated on PLAINTIFFS and the AGGRIEVED EMPLOYEES.

24 125. All of the conduct and violations alleged herein occurred during the PAGA
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27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
2 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations
3 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
4 2018 AJDAR 12157 (Certified for Publication 12/19/18).

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
2 in which a violation occurs and one hundred dollars (\$100) per each member of
3 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
5 an award of costs for violation of Cal. Lab. Code § 226;
- 6 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
7 the applicable IWC Wage Order;
- 8 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
9 1197;
- 10 F) The amount of the expenses PLAINTIFFS and each member of the
11 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
12 plus interest, and costs of suit.; and,
- 13 G) The wages of all terminated employees in the CALIFORNIA LABOR
14 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
15 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 16 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 17 A) Recovery of civil penalties as prescribed by the Labor Code Private
18 Attorneys General Act of 2004; and,
- 19 B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but
20 not limited to, pursuant to Labor Code §2699.
- 21 4. On all claims:
- 22 A) An award of interest, including prejudgment interest at the legal rate;
- 23 B) Such other and further relief as the Court deems just and equitable; and,
- 24 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
25 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
26 and/or §2802.

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Dated: May 11, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: May 11, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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1004

May 19, 2022
CA2651

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency DJO, LLC

Online Filing

Certified Mail #70220410000153343225

CT Corporation System

330 N. Brand Blvd., Suite 700

Glendale, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by DJO, LLC in California, including any employees staffed with DJO, LLC by a third party, and classified as non-exempt employees during the time period of May 19, 2021 until a date as determined by the Court. Our offices represent Plaintiffs Tamika Walker and Shannon Peete (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against DJO, LLC (“Defendant”). Plaintiff Walker was employed by Defendant in California as a non-exempt employee in the position of Private Client Services Representative from September of 2019 to April of 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Plaintiff Peete was employed by Defendant in California as a non-exempt employee in the position of Private Client Services Representative from September of 2019 to April of 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages all of their sick pay wages at the correct rates, for all of their missed meal and rest break (and pay the meal and rest break premiums at the correct regular rates of pay), and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040,

subd. 5(B). Further, Defendant failed to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages, including the “Retro Pay” payments, which were regular wage payments. Plaintiffs further contend that Defendant failed to provide accurate wage statements to Plaintiffs, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiffs and Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the correct total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiffs and other Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2) as when the hours were added up they did not equal the actual amount of hours worked each pay period. Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.