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ELECTRONICALLY FILED

Superior Court of California

County of Sacramento

11/22/2024

By: A. Turner Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

MARGARITA DELGADO, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

CAPITAL READY MIX, INC, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2022-00325517

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT provides ready mix concrete.

10 3. PLAINTIFF has been employed by DEFENDANT in California since August of
11 2020 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on
12 an hourly basis, and entitled to the legally required meal and rest periods and payment of
13 minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
17 period beginning August 22, 2018 and ending on the date as determined by the Court (the
18 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
19 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

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

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

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
25 and CALIFORNIA CLASS Members to work without paying them for all the time they are
26 under DEFENDANT's control. PLAINTIFF and CALIFORNIA CLASS Members also worked
27 off the clock with respect to time spent undergoing mandatory drug testing or any other testing
28 and/or examination required as a condition of employment. Additionally, DEFENDANT, as

1 a matter of established company policy and procedure, administers a uniform practice of
2 rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS
3 Members, always to the benefit of DEFENDANT, so that during the course of their
4 employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would
5 have been paid had they been paid for actual recorded time rather than “rounded” time.
6 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and
7 CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a
8 condition of employment, required these employees to submit to mandatory temperature checks
9 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT’s
10 timekeeping system for the workday. Finally, DEFENDANT also requires PLAINTIFF and
11 other CALIFORNIA CLASS Members to complete mandatory unpaid training related to
12 computer systems being used at the hospital and also complete mandatory “Health Streams”
13 which deal with hospital compliance issues. As a result, PLAINTIFF and other CALIFORNIA
14 CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal
15 breaks by working without their time being correctly recorded and without compensation at the
16 applicable rates. DEFENDANT’s policy and practice not to pay PLAINTIFF and other
17 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT’s business
18 records.

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

23 10. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
24 Members’ compensation is DEFENDANT’s non-discretionary incentive program that paid
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANT. The non-discretionary incentive program provided all
27 employees paid on an hourly basis with incentive compensation when the employees met the
28 various performance goals set by DEFENDANT. However, when calculating the regular rate

1 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and other
2 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation
3 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
4 meal and rest break premium pay. Management and supervisors described the incentive
5 program to potential and new employees as part of the compensation package. As a matter of
6 law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
7 Members must be included in the "regular rate of pay." The failure to do so has resulted in a
8 underpayment of overtime compensation and meal and rest break premiums to PLAINTIFF and
9 other CALIFORNIA CLASS Members by DEFENDANT.

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

22 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
23 CALIFORNIA CLASS Members are also required from time to time to work in excess of four
24 (4) hours without being provided ten (10) minute rest periods. Further, these employees are
25 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
26 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
27 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
28 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours

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

14 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately
15 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
16 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
17 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
18 all time worked, meaning the time during which an employee was subject to the control of an
19 employer, including all the time the employee was permitted or suffered to permit this work.
20 DEFENDANT requires these employees to work off the clock without paying them for all the
21 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
22 known that PLAINTIFF and the other members of the CALIFORNIA CLASS are under
23 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
24 Members forfeit time worked by working without their time being accurately recorded and
25 without compensation at the applicable minimum wage and overtime wage rates. To the extent
26 that the time worked off the clock does not qualify for overtime premium payment,
27 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
28 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

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

28 17. DEFENDANT underpays sick pay wages to PLAINTIFF and other CALIFORNIA
CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal.
Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
discretionary remuneration, including but not limited to, incentives, shift differential pay, and

1 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
2 to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

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

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

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

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

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

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

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

1 required meal periods is evidenced by DEFENDANT's business records. The amount in
2 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

3 4 **JURISDICTION AND VENUE**

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

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

14 15 **THE CALIFORNIA CLASS**

16 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
17 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
18 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
19 all individuals who are or previously were employed by DEFENDANT in California and
20 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
21 period beginning August 22, 2018 and ending on the date as determined by the Court (the
22 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
23 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

27 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
3 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT
4 enjoyed the benefit of this work, required employees to perform this work and permits or
5 suffers to permit this work.

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

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

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

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

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

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

28 34. In addition to meeting the statutory prerequisites to a Class Action, this action is

1 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

2 (a) Without class certification and determination of declaratory, injunctive,
3 statutory and other legal questions within the class format, prosecution of
4 separate actions by individual members of the CALIFORNIA CLASS will
5 create the risk of:

6 1) Inconsistent or varying adjudications with respect to individual
7 members of the CALIFORNIA CLASS which would establish
8 incompatible standards of conduct for the parties opposing the
9 CALIFORNIA CLASS; and/or,

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

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

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

28 (c) Common questions of law and fact exist as to the members of the

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

- 6 1) The interests of the members of the CALIFORNIA CLASS in
7 individually controlling the prosecution or defense of separate
8 actions in that the substantial expense of individual actions will be
9 avoided to recover the relatively small amount of economic losses
10 sustained by the individual CALIFORNIA CLASS Members when
11 compared to the substantial expense and burden of individual
12 prosecution of this litigation;
- 13 2) Class certification will obviate the need for unduly duplicative
14 litigation that would create the risk of:
 - 15 A. Inconsistent or varying adjudications with respect to
16 individual members of the CALIFORNIA CLASS, which
17 would establish incompatible standards of conduct for the
18 DEFENDANT; and/or,
 - 19 B. Adjudications with respect to individual members of the
20 CALIFORNIA CLASS would as a practical matter be
21 dispositive of the interests of the other members not parties
22 to the adjudication or substantially impair or impede their
23 ability to protect their interests;
- 24 3) In the context of wage litigation because a substantial number of
25 individual CALIFORNIA CLASS Members will avoid asserting
26 their legal rights out of fear of retaliation by DEFENDANT, which
27 may adversely affect an individual's job with DEFENDANT or
28 with a subsequent employer, the Class Action is the only means to

1 assert their claims through a representative; and,

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

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

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

1 the CALIFORNIA CLASS;

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

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

19
20 **THE CALIFORNIA LABOR SUB-CLASS**

21 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
22 Eighth causes Action on behalf of a California sub-class, defined as all members of the
23 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
24 and classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
25 time during the period between August 22, 2018 and ending on the date as determined by the
26 Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ.
27 Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
28 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 22 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB-
24 CLASS for missed meal and rest breaks in violation of the California
25 Labor Code and California regulations and the applicable California Wage
26 Order;
27 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS with accurate

1 itemized wage statements;

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

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

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

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

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

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

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

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

25 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
26 when an employee is discharged or quits from employment, the employer
27 must pay the employee all wages due without abatement, by failing to
28 tender full payment and/or restitution of wages owed or in the manner

required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,

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

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,
- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has

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 PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUB-CLASS that would make class certification inappropriate.
5 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
6 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

7 44. In addition to meeting the statutory prerequisites to a Class Action, this action is
8 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 of
11 separate actions by individual members of the CALIFORNIA LABOR
12 SUB-CLASS will create the risk of:

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

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

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

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

- 8 1) The interests of the members of the CALIFORNIA LABOR SUB-
9 CLASS in individually controlling the prosecution or defense of
10 separate actions in that the substantial expense of individual
11 actions will be avoided to recover the relatively small amount of
12 economic losses sustained by the individual CALIFORNIA
13 LABOR SUB-CLASS Members when compared to the substantial
14 expense and burden of individual prosecution of this litigation;
15 2) Class certification will obviate the need for unduly duplicative
16 litigation that would create the risk of:

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

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

- 26 3) In the context of wage litigation because a substantial number of
27 individual CALIFORNIA LABOR SUB-CLASS Members will
28 avoid asserting their legal rights out of fear of retaliation by

1 DEFENDANT, which may adversely affect an individual's job
2 with DEFENDANT or with a subsequent employer, the Class
3 Action is the only means to assert their claims through a
4 representative; and,

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

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

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

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA LABOR SUB-CLASS;

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

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

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
12 ascertainable from the business records of DEFENDANT. The
13 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
14 CLASS Members who worked for DEFENDANT in California at any
15 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

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24
25 **FIRST CAUSE OF ACTION**

26 **For Unlawful Business Practices**

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

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

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

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

6 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
7 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
8 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
9 competition as follows:

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

14 Cal. Bus. & Prof. Code § 17203.

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

23 50. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
24 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
25 unscrupulous or substantially injurious to employees, and were without valid justification or
26 utility for which this Court should issue equitable and injunctive relief pursuant to Section
27 17203 of the California Business & Professions Code, including restitution of wages wrongfully
28 withheld.

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

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

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

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

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

28 56. By and through the unlawful and unfair business practices described herein,

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

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

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

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

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

27
28 **SECOND CAUSE OF ACTION**

For Failure To Pay Minimum Wages
[Cal. Lab. Code §§ 1194, 1197 and 1197.1]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)

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

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

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

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

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

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

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

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

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

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

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

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

28 73. In performing the acts and practices herein alleged in violation of California labor

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

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

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26 **THIRD CAUSE OF ACTION**

27 **For Failure To Pay Overtime Compensation**

28 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

81. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that failed to accurately record overtime worked by

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
2 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
4 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
5 workweek.

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

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

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

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

26 86. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
27 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
28 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,

1 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
3 failed to accurately record and pay as evidenced by DEFENDANT's business records and
4 witnessed by employees.

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

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

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

25 90. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
27 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
28 by the California Labor Code and/or other applicable statutes. To the extent minimum and/or

1 overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
2 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
3 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
4 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
5 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
6 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
7 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

8
9 **FOURTH CAUSE OF ACTION**

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

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

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

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

17 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
18 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
19 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
20 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
21 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
22 duties for the legally required off-duty meal periods. As a result of their rigorous work
23 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
24 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
25 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
27 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
28 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period

1 in some workdays in which these employees were required by DEFENDANT to work ten (10)
2 hours of work from time to time. As a result, PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
4 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

14
15 **FIFTH CAUSE OF ACTION**

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

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

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

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

23 96. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
24 time to time required to work in excess of four (4) hours without being provided ten (10) minute
25 rest periods. Further, these employees from time to time were denied their first rest periods of
26 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
27 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
28 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some

1 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
2 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
3 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
5 periods by DEFENDANT and DEFENDANT's managers.

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

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

15 **SIXTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 226]**

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

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

23 100. Cal. Labor Code § 226 provides that an employer must furnish employees
24 with
25 an "accurate itemized" statement in writing showing:

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

(3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
(5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid,
(7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8) by failing to list the correct name of the legal entity that employs PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

102. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty

1 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
2 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
3 226, in an amount according to proof at the time of trial (but in no event more than four
4 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
5 CALIFORNIA LABOR SUB-CLASS herein).

6
7 **SEVENTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 2802]**

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

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

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

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

19 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
20 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
21 CLASS members for required expenses incurred in the discharge of their job duties for
22 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
23 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
24 limited to, costs related to using their personal cellular phones on behalf of and for the
25 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
26 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
27 phones in order to perform work related job tasks. DEFENDANT's policy and practice was
28

1 to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
2 expenses resulting from using their personal cellular phones for DEFENDANT within the
3 course and scope of their employment for DEFENDANT. These expenses were necessary
4 to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
5 conduct to assert any waiver of this expectation. Although these expenses were necessary
6 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
7 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
8 LABOR SUB-CLASS members for these expenses as an employer is required to do under
9 the laws and regulations of California.

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

14 **EIGHTH CAUSE OF ACTION**

15 **For Failure to Pay Sick Pay Wages**

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

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

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

22 108. Cal Lab. Code § 233 provides that an employer must permit an employee to
23 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
24 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
25 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
26 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
27 right to sick pay wages, which an employer must calculate and compensate based on one of
28 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the

1 same manner as the regular rate of pay for the workweek in which the employee uses paid
2 sick time, whether or not the employee actually works overtime in that workweek,” or (ii)
3 “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s
4 total wages, not including overtime premium pay, by the employee’s total hours worked in
5 the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218 and
6 233, employees may sue to recover underpaid sick pay wages as damages.

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

19 110. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
20 during each calendar month and are to be paid no later than the payday for the next regular
21 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
22 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
23 no later than the payday for the next regular payroll period after accrued sick leave is used
24 as paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges
25 an employee, wages earned and unpaid at the time of discharge are due and payable
26 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
27 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
28 the employee has given 72-hour notice of his or her intention to quit, in which case the

1 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
2 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
3 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
4 wages of the employee shall continue as a penalty from the due date, and at the same rate
5 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
6 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
7 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
8 sue to recover applicable penalties.

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

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

27
28 **NINTH CAUSE OF ACTION**

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

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

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

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

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

16 115. PLAINTIFF, and such persons that may be added from time to time who
17 satisfy the requirements and exhaust the administrative procedures under the Private
18 Attorney General Act, bring this Representative Action on behalf of the State of California
19 with respect to herself and all individuals who are or previously were employed by
20 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
21 EMPLOYEES") during the time period of May 13, 2021 until a date as determined by the
22 Court (the "PAGA PERIOD").

23 116. On May 13, 2022, PLAINTIFF gave written notice by electronic mail to the
24 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
25 employer of the specific provisions of this code alleged to have been violated as required by
26 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
27 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
28 now commence a representative civil action under PAGA pursuant to Section 2699 as the

1 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
2 defined.

3 117. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
6 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
7 (d) failed to pay overtime wages and sick pay wages, and (e) failed to reimburse employees
8 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
9 Code §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 510, 512,
10 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
11 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives
12 rise to civil penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of
13 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
14 as the representative of the State of California for the illegal conduct perpetrated on
15 PLAINTIFF and the AGGRIEVED EMPLOYEES.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
19 severally, as follows:

20 1. On behalf of the CALIFORNIA CLASS:

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

for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,
- F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.

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

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

4. On all claims:

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

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- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

Dated: November 22, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/Nicholas J. De Blouw
 Nicholas J. De Blouw, LLP

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DEMAND FOR A JURY TRIAL

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

Dated: November 22, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/Nicholas J. De Blouw
 Nicholas J. De Blouw, LLP