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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 REBEKAH DIAZ, RANDI STENSBERG,
15 RAFAEL URIBE, and VIRGINIA ZEBLEY,
16 individuals, on behalf of themselves and on
17 behalf of all persons similarly situated,

18 Plaintiffs,

19 vs.

20 LOYAL SOURCE GOVERNMENT
21 SERVICES LLC, a Limited Liability Company;
22 and DOES 1 through 50, inclusive,

23 Defendants.

Case No. **22STCV15413**

FIRST AMENDED CLASS ACTION

COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §§ 17200, *et*
seq.;

2. FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194,
1197 & 1197.1;

3. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE § 510;

4. FAILURE TO PROVIDE REQUIRED MEAL
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE APPLICABLE
IWC WAGE ORDER;

5. FAILURE TO PROVIDE REQUIRED REST
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE APPLICABLE
IWC WAGE ORDER;

6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION OF
CAL. LAB. CODE § 226;

7. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 2802;

8. FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE §§
201, 202 AND 203;

9. FAILURE TO PAY SICK PAY WAGES IN
VIOLATION OF CAL. LAB CODE §§201-204,
233, 246;

10. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR CODE
§§ 2698, *et seq.*]; and,

11. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY.

DEMAND FOR A JURY TRIAL

1 Plaintiffs Rebekah Diaz, Randi Stensberg, Rafael Uribe, and Virginia Zebley
2 (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated current
3 and former employees alleges on information and belief, except for their own acts and
4 knowledge which are based on personal knowledge, the following:

5
6 **THE PARTIES**

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

10 2. DEFENDANT staffs medical service employees to California companies.

11 3. Plaintiff Diaz was employed by DEFENDANT in California from September of
12 2021 to November 4, 2021 and was at all times classified by DEFENDANT as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

15 3. Plaintiff Stensberg was employed by DEFENDANT in California from February
16 of 2019 to October of 2021 and was at all times classified by DEFENDANT as a non-exempt
17 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
18 payment of minimum and overtime wages due for all time worked.

19 4. Plaintiff Uribe is employed by DEFENDANT in California, beginning in
20 November of 2019, and has been at all times classified by DEFENDANT as a non-exempt
21 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
22 payment of minimum and overtime wages due for all time worked.

23 5. Plaintiff Zebley is employed by DEFENDANT in California, beginning in
24 October of 2021, and has been at all times classified by DEFENDANT as a non-exempt
25 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
26 payment of minimum and overtime wages due for all time worked.

27 6. PLAINTIFFS bring this Class Action on behalf of themselves and a California
28 class, defined as all individuals who are or previously were employed by DEFENDANT in

1 California, including any employees staffed with DEFENDANT by a third party, and classified
2 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
3 beginning four (4) years prior to the filing of this Complaint and ending on the date as
4 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
5 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
6 (\$5,000,000.00).

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

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

27 9. The agents, servants and/or employees of the Defendants and each of them acting
28 on behalf of the Defendants acted within the course and scope of his, her or its authority as the

1 agent, servant and/or employee of the Defendants, and personally participated in the conduct
2 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
3 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
4 all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
6 Defendants' agents, servants and/or employees.

7 **THE CONDUCT**

8 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
9 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
10 meaning the time during which an employee is subject to the control of an employer, including
11 all the time the employee is suffered or permitted to work. DEFENDANT requires
12 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the
13 time they are under DEFENDANT's control. Among other things, DEFENDANT requires
14 PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS's off-duty
15 meal break. PLAINTIFFS is from time to time interrupted by work assignments while clocked
16 out for what should be PLAINTIFFS's off-duty meal break. PLAINTIFFS and CALIFORNIA
17 CLASS Members also worked off the clock with respect to time spent undergoing mandatory
18 drug testing or any other testing and/or examination required as a condition of employment.
19 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
20 practice of rounding the actual time worked and recorded by PLAINTIFFS and CALIFORNIA
21 CLASS Members, always to the benefit of DEFENDANT, so that during the course of their
22 employment, PLAINTIFFS and CALIFORNIA CLASS Members are paid less than they would
23 have been paid had they been paid for actual recorded time rather than "rounded" time.
24 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and
25 CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a
26 condition of employment, required these employees to submit to mandatory temperature checks
27 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
28 timekeeping system for the workday. As a result, PLAINTIFFS and other CALIFORNIA

1 CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal
2 breaks by working without their time being correctly recorded and without compensation at the
3 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other
4 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
5 business records.

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

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

25 13. As a result of their rigorous work schedules, PLAINTIFFS and other
26 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
27 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and
28 other CALIFORNIA CLASS Members were required from time to time to perform work as

1 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
2 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and
3 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
4 which these employees were required by DEFENDANT to work ten (10) hours of work.
5 DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
6 penalties to PLAINTIFFS and other CALIFORNIA CLASS Members. PLAINTIFFS and other
7 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
8 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

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

1 up, they did not equal the actual total hours worked during the pay period. Aside, from the
2 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an
3 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
4 As a result, DEFENDANT from time to time provided PLAINTIFFS and the other members
5 of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

10 [I]n addition to, and entirely independent and apart from, any other penalty provided in
11 this article, every person who fails to pay the wages of each employee as provided in
12 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
13 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.

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

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

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

27 21. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
28 the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned

1 non-discretionary incentive wages which increased their regular rate of pay. However, when
2 sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and members of the
3 CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay, as required under
4 Cal. Lab. Code Section 246.

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

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

21 24. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
22 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
23 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence
24 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
25 2802, employers are required to indemnify employees for all expenses incurred in the course
26 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
27 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
28 in direct consequence of the discharge of his or her duties, or of his or her obedience to the

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

3 25. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
7 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
8 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANT to
9 use their personal cellular phones. As a result, in the course of their employment with
10 DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA CLASS incurred
11 unreimbursed business expenses which included, but were not limited to, costs related to the use
12 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

13 26. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
14 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage
15 Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due
16 to PLAINTIFFS. DEFENDANT did not have a policy or practice which provided timely off-
17 duty meal and rest breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for
18 PLAINTIFFS's missed meal and rest breaks. The nature of the work performed by the
19 PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS's duties
20 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
21 PLAINTIFFS with the legally required meal periods is evidenced by DEFENDANT's business
22 records. The amount in controversy for PLAINTIFFS individually does not exceed the sum or
23 value of \$75,000.

24 **JURISDICTION AND VENUE**

25 27. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
27 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
28

1 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

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10 **THE CALIFORNIA CLASS**

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

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

23 31. DEFENDANT, as a matter of company policy, practice and procedure, and in
24 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
27 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
28 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and

1 permits or suffers to permit this work.

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

11 33. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
12 CLASS Members is impracticable.

13 34. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
14 law by:

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

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

- 27 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
28 that the joinder of all such persons is impracticable and the disposition of

1 their claims as a class will benefit the parties and the Court;

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

5 (c) The claims of the representative PLAINTIFFS are typical of the claims of
6 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
7 other members of the CALIFORNIA CLASS, was classified as a non-
8 exempt employee paid on an hourly basis who was subjected to the
9 DEFENDANT's deceptive practice and policy which failed to provide the
10 legally required meal and rest periods to the CALIFORNIA CLASS and
11 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA
12 CLASS. PLAINTIFFS sustained economic injury as a result of
13 DEFENDANT's employment practices. PLAINTIFFS and the members
14 of the CALIFORNIA CLASS were and are similarly or identically harmed
15 by the same unlawful, deceptive and unfair misconduct engaged in by
16 DEFENDANT; and,

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

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

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

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

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

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

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

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

25 (c) Common questions of law and fact exist as to the members of the
26 CALIFORNIA CLASS, with respect to the practices and violations of
27 California law as listed above, and predominate over any question
28 affecting only individual CALIFORNIA CLASS Members, and a Class

1 Action is superior to other available methods for the fair and efficient
2 adjudication of the controversy, including consideration of:

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

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

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

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

1 the CALIFORNIA CLASS for the injuries sustained;

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

5 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
6 the business records of DEFENDANT; and,

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

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

16
17 **THE CALIFORNIA LABOR SUB-CLASS**

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

27 40. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
28 Commission ("IWC") Wage Order requirements, and the applicable provisions of California

1 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
2 to correctly calculate compensation for the time worked by PLAINTIFFS and the other
3 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these
4 employees, even though DEFENDANT enjoyed the benefit of this work, required employees
5 to perform this work and permitted or suffered to permit this work. DEFENDANT has denied
6 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
7 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
8 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
9 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
10 accordingly.

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

16 42. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
17 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 20 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
21 compensation due to members of the CALIFORNIA LABOR SUB-
22 CLASS for missed meal and rest breaks in violation of the California
23 Labor Code and California regulations and the applicable California Wage
24 Order;
- 25 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
26 members of the CALIFORNIA LABOR SUB-CLASS with accurate
27 itemized wage statements;
- 28 (c) Whether DEFENDANT has engaged in unfair competition by the

1 above-listed conduct;

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

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

5 44. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
6 under California law by:

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

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

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

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

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

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

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

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

1 representative PLAINTIFFS and the members of the CALIFORNIA
2 LABOR SUB-CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
4 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

- 11 1) Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA LABOR SUB-CLASS which
13 would establish incompatible standards of conduct for the parties
14 opposing the CALIFORNIA LABOR SUB-CLASS; or,
15 2) Adjudication with respect to individual members of the
16 CALIFORNIA LABOR SUB-CLASS which would as a practical
17 matter be dispositive of interests of the other members not party to
18 the adjudication or substantially impair or impede their ability to
19 protect their interests.

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

27 (c) Common questions of law and fact predominate as to the members of the
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and

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

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

1 Action is the only means to assert their claims through a
2 representative; and,

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

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

- 10 (a) The questions of law and fact common to the CALIFORNIA LABOR
11 SUB-CLASS predominate over any question affecting only individual
12 CALIFORNIA LABOR SUB-CLASS Members;
- 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 LABOR SUB-CLASS because in the context of employment litigation a
16 substantial number of individual CALIFORNIA LABOR SUB-CLASS
17 Members will avoid asserting their rights individually out of fear of
18 retaliation or adverse impact on their employment;
- 19 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
20 numerous that it is impractical to bring all members of the CALIFORNIA
21 LABOR SUB-CLASS before the Court;
- 22 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
23 Members, will not be able to obtain effective and economic legal redress
24 unless the action is 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

the CALIFORNIA LABOR SUB-CLASS;

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

50. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
2 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
3 competition as follows:

4 Any person who engages, has engaged, or proposes to engage in unfair
5 competition may be enjoined in any court of competent jurisdiction. The court
6 may make such orders or judgments, including the appointment of a receiver, as
7 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.

8 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

28 59. All the acts described herein as violations of, among other things, the Industrial

1 Welfare Commission Wage Orders, the California Code of Regulations, and the California
2 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
3 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
4 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

21
22 **SECOND CAUSE OF ACTION**

23 **For Failure To Pay Minimum Wages**

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

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

26 **and Against All Defendants)**

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

1 paragraphs of this Complaint.

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

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

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

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

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

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

23 70. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately calculated the correct time worked and consequently underpaid the actual time
25 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
26 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
27 benefits in violation of the California Labor Code, the Industrial Welfare Commission
28 requirements and other applicable laws and regulations.

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

4 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
5 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
6 Members to work without paying them for all the time they were under DEFENDANT's
7 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
8 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
9 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

1 company profits at the expense of these employees.

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

13
14 **THIRD CAUSE OF ACTION**

15 **For Failure To Pay Overtime Compensation**

16 **[Cal. Lab. Code § 510]**

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

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

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

28 79. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and

1 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

27 85. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive full compensation for overtime worked.

2 86. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
3 from the overtime requirements of the law. None of these exemptions are applicable to the
4 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
5 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not
6 subject to a valid collective bargaining agreement that would preclude the causes of action
7 contained herein this Complaint. Rather, PLAINTIFFS brings this Action on behalf of
8 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
9 of non-negotiable, non-waiveable rights provided by the State of California.

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

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

20 89. 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 amount of time they worked, PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
24 injury in amounts which are presently unknown to them and which will be ascertained
25 according to proof at trial.

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

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

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

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

23 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

9 102. Cal. Labor Code § 226 provides that an employer must furnish employees
10 with
11 an “accurate itemized” statement in writing showing:

- 12 (1) gross wages earned,
13 (2) total hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from payment of
15 overtime under subdivision (a) of Section 515 or any applicable order of the
16 Industrial Welfare Commission,
17 (3) the number of piecerate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis,
19 (4) all deductions, provided that all deductions made on written orders of the
20 employee may be aggregated and shown as one item,
21 (5) net wages earned,
22 (6) the inclusive dates of the period for which the employee is paid,
23 (7) the name of the employee and his or her social security number, except that by
24 January 1, 2008, only the last four digits of his or her social security number or an
25 employee identification number other than a social security number may be shown on
26 the itemized statement,
27 (8) the name and address of the legal entity that is the employer, and
28 (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.

103. From time to time, DEFENDANT also failed to provide PLAINTIFFS 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. PLAINTIFFS and

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

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

26
27 **SEVENTH CAUSE OF ACTION**

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

1 [Cal. Lab. Code § 2802]

2 (By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All
3 Defendants)

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

7 106. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

1 the laws and regulations of California.

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

6
7 **EIGHTH CAUSE OF ACTION**

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

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

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

11 **and Against All Defendants)**

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

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

16 As used in this article:

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

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

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

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

24 If an employee not having a written contract for a definite period quits his
or her employment, his or her wages shall become due and payable not
25 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
26 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-
27 hour notice shall be entitled to receive payment by mail if he or she so
requests and designates a mailing address. The date of the mailing shall
28 constitute the date of payment for purposes of the requirement to provide

1 payment within 72 hours of the notice of quitting.

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

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

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

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

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

21 **NINTH CAUSE OF ACTION**

22 **For Failure to Pay Sick Pay Wages**

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

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

25 **and Against All Defendants)**

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

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

1 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
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.

13 118. As a matter of policy and practice, DEFENDANT pays sick pay wages to
14 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the
15 incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-
16 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
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.

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

1 no later than the payday for the next regular payroll period after accrued sick leave is used
2 as paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges
3 an 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.

15 120. 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 is informed and believes 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's 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.

121. 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 Plaintiff Diaz and Against All Defendants)

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

123. 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.

124. Plaintiff Diaz, 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, brings this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of May 2, 2021 until a date as determined by the Court (the "PAGA

1 PERIOD").

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

10 126. The policies, acts and practices heretofore described were and are an unlawful
11 business act or practice because DEFENDANT (a) failed to provide Plaintiff Diaz 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) failed 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, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
18 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
19 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ Plaintiff Diaz
20 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
21 General Act of 2004 as the representative of the State of California for the illegal conduct
22 perpetrated on Plaintiff Diaz and the AGGRIEVED EMPLOYEES.

23 127. All of the conduct and violations alleged herein occurred during the PAGA
24 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
25 Plaintiff Diaz during the PAGA PERIOD, Plaintiff Diaz seeks penalties for those violations

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

1 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
2 2018 AJDAR 12157 (Certified for Publication 12/19/18).

3
4 **ELEVENTH CAUSE OF ACTION**

5 **Wrongful Termination In Violation of Public Policy**

6 **(By Plaintiff Stensberg Against All Defendants)**

7 128. Plaintiff Stensberg realleges and incorporates by reference, as though fully set
8 forth herein, the prior paragraphs of this Complaint.

9 129. In August and September of 2021, and continuing throughout the rest of
10 Plaintiff Stensberg's employment, Plaintiff Stensberg engaged in protected activity by
11 complaining to DEFENDANT's of DEFENDANT's illegal employment practices.

12 130. Subsequent to Plaintiff's protected activity of raising such complaints,
13 DEFENDANT subjected Plaintiff Stensberg to adverse employment actions by retaliating
14 against Plaintiff Stensberg. Specifically, after Plaintiff Stensberg raised her protected
15 complaints in August and September of 2021, Defendant terminated Plaintiff's employment
16 in October of 2021. As a result, there is a causal link between Plaintiff Stensberg's protected
17 activity and Plaintiff Stensberg's employment, which is against public policy.

18 131. Plaintiff Stensberg raised complaints of illegality while Plaintiff Stensberg
19 worked for DEFENDANT and was believed to be willing to raise complaints, and
20 DEFENDANT retaliated against Plaintiff Stensberg by taking adverse employment actions,
21 including employment termination, against Plaintiff Stensberg.

22 132. As a proximate result of DEFENDANT'S willful, knowing, and intentional,
23 Plaintiff Stensberg has suffered and continues to suffer humiliation, emotional distress, and
24 mental and physical pain and anguish, all to Plaintiff Stensberg's damage in a sum
25 according to proof.

26 133. As a result of DEFENDANT'S adverse employment actions against Plaintiff
27 Stensberg, Plaintiff Stensberg has suffered general and special damages in sums according
28 to proof.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and,
- 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 PLAINTIFFS 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, Eighth and Ninth 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 PLAINTIFFS 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

1 in which a violation occurs and one hundred dollars (\$100) per each member of
2 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
3 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
4 an award of costs for violation of Cal. Lab. Code § 226;

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

7 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
8 1197;

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

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

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

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

19 4. On behalf of Plaintiff Stensberg for the Eleventh cause of action:

20 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

21 B) Special and General damages according to proof;

22 C) Statutory damages, penalties and attorney's fees;

23 D) For punitive damages in an amount necessary to make an example of and to
24 punish DEFENDANT and deter DEFENDANT from engaging in future similar
25 conduct;

26 E) For loss of earnings (both past and future); and,

27 F) For interest at the legal rate in an amount according to proof.

28 5. On all claims:

- 1 A) An award of interest, including prejudgment interest at the legal rate;
2 B) Such other and further relief as the Court deems just and equitable; and,
3 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
4 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
5 and/or §2802.
6

7 Dated: March 30, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

8 By: /s/ Nicholas De Blouw
9 Nicholas J. De Blouw
10 Attorneys for PLAINTIFFS
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DEMAND FOR A JURY TRIAL

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

Dated: March 30, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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