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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

08/14/2023

Clerk of the Court

BY: BOWMAN LIU

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

MATTHEW TRAVIS, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No. CGC-22-601836

[Consolidated with Case No. CGC-22-
601841]

**FIRST AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT FOR:**

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Alto Pharmacy LLC ("DEFENDANT") is a limited liability company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California.

9 2. DEFENDANT is a full-service pharmacy that delivers prescriptions to their
10 customers' homes.

11 3. PLAINTIFF has been employed by DEFENDANT in California since November
12 2019 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on
13 an hourly basis, and entitled to the legally required meal and rest periods and payment of
14 minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California,
17 including any employees staffed with DEFENDANT by a third party, and classified as non-
18 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
19 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
20 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
21 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which
25 failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged
26 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
27 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
28 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction

1 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
2 the other members of the CALIFORNIA CLASS who have been economically injured by
3 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
4 equitable relief.

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

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

22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
27 and CALIFORNIA CLASS Members to work without paying them for all the time they are
28 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to

1 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
2 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
3 should have been PLAINTIFF's off-duty meal break. PLAINTIFF and CALIFORNIA CLASS
4 Members worked off the clock with respect to time spent undergoing mandatory drug testing
5 or any other testing and/or examination required as a condition of employment. Additionally,
6 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
7 practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA
8 CLASS Members, always to the benefit of DEFENDANT, so that during the course of their
9 employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would
10 have been paid had they been paid for actual recorded time rather than "rounded" time.
11 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and
12 CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a
13 condition of employment, required these employees to submit to mandatory temperature checks
14 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
15 timekeeping system for the workday. As a result, PLAINTIFF and other CALIFORNIA CLASS
16 Members forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by
17 working without their time being correctly recorded and without compensation at the applicable
18 rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA
19 CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

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

24 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
25 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANT. The non-discretionary incentive program provided all
28 employees paid on an hourly basis with incentive compensation when the employees met the

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

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

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

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

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

1 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

19 [I]n addition to, and entirely independent and apart from, any other penalty provided in
20 this article, every person who fails to pay the wages of each employee as provided in
21 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
22 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.

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

26 17. DEFENDANT underpays sick pay wages to PLAINTIFF and other
27 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
28 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt

1 employees earn non-discretionary remuneration, including but not limited to, incentives, shift
2 differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT
3 underpays sick pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base
4 rates of pay.

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

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

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

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

1 the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
2 according to proof, related penalties, interest, attorney fees and costs.

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

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

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

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

5 6 **JURISDICTION AND VENUE**

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

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

16 17 **THE CALIFORNIA CLASS**

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

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

1 accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **THE CALIFORNIA LABOR SUB-CLASS**

24 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
25 Eighth causes Action on behalf of a California sub-class, defined as all members of the
26 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California,
27 including any employees staffed with DEFENDANT by a third party, and classified as non
28 exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period

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

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

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

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

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

- 26 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA LABOR SUB-
28 CLASS for missed meal and rest breaks in violation of the California

1 Labor Code and California regulations and the applicable California Wage
2 Order;

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

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

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

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

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

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

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

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

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

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

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

- 12 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
13 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
14 Members is impracticable and the disposition of their claims as a class
15 will benefit the parties and the Court;
- 16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
17 that are raised in this Complaint are common to the CALIFORNIA
18 LABOR SUB-CLASS and will apply to every member of the
19 CALIFORNIA LABOR SUB-CLASS;
- 20 (c) The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
22 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
23 was a non-exempt employee paid on an hourly basis who was subjected
24 to the DEFENDANT's practice and policy which failed to pay the correct
25 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
26 PLAINTIFF sustained economic injury as a result of DEFENDANT's
27 employment practices. PLAINTIFF and the members of the
28 CALIFORNIA LABOR SUB-CLASS were and are similarly or

1 identically harmed by the same unlawful, deceptive, and unfair
2 misconduct engaged in by DEFENDANT; and,

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

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

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

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

- 26 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
27 or refused to act on grounds generally applicable to the CALIFORNIA
28 LABOR SUB-CLASS, making appropriate class-wide relief with respect

1 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
2 DEFENDANT fails to pay all wages due. Including the correct wages for
3 all time worked by the members of the CALIFORNIA LABOR SUB-
4 CLASS as required by law;

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

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

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

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

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a practical
27 matter be dispositive of the interests of the other members
28 not parties to the adjudication or substantially impair or

impede their ability to protect their interests;

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

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

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

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

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

(d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS

Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the 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.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

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

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

8 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

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

20 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
21 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS for the true time they worked, PLAINTIFF 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 72. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
28 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 90. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

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

11 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

1 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
2 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
3 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
4 in some workdays in which these employees were required by DEFENDANT to work ten (10)
5 hours of work from time to time. As a result, PLAINTIFF and other members of the
6 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
7 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

17
18 **FIFTH CAUSE OF ACTION**

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

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

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

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

26 96. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
27 time to time required to work in excess of four (4) hours without being provided ten (10) minute
28 rest periods. Further, these employees from time to time were denied their first rest periods of

1 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
2 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
3 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
4 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
6 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
8 periods by DEFENDANT and DEFENDANT's managers.

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

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

18 **SIXTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 226]**

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

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

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

28 (1) gross wages earned,

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

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

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

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

8
9 **SEVENTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

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

16 **EIGHTH CAUSE OF ACTION**

17 **For Failure to Pay Sick Pay Wages**

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

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

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

24 108. Cal Lab. Code § 233 provides that an employer must permit an employee to
25 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
26 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
27 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
28 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested

1 right to sick pay wages, which an employer must calculate and compensate based on one of
2 two calculations: (i) “Paid sick time for nonexempt employees shall be calculated in the
3 same manner as the regular rate of pay for the workweek in which the employee uses paid
4 sick time, whether or not the employee actually works overtime in that workweek,” or (ii)
5 “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s
6 total wages, not including overtime premium pay, by the employee’s total hours worked in
7 the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218 and
8 233, employees may sue to recover underpaid sick pay wages as damages.

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

21 110. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
22 during each calendar month and are to be paid no later than the payday for the next regular
23 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
24 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
25 no later than the payday for the next regular payroll period after accrued sick leave is used as
26 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
27 employee, wages earned and unpaid at the time of discharge are due and payable
28 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all

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

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

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

1 **NINTH CAUSE OF ACTION**

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

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

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

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

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

17 115. PLAINTIFF, and such persons that may be added from time to time who
18 satisfy the requirements and exhaust the administrative procedures under the Private
19 Attorney General Act, brings this Representative Action on behalf of the State of California
20 with respect to himself and all individuals who are or previously were employed by
21 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
22 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
23 time period of June 9, 2021 until a date as determined by the Court (the "PAGA PERIOD").

24 116. On June 9, 2022, PLAINTIFF gave written notice by electronic mail to the
25 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
28 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may

1 now commence a representative civil action under PAGA pursuant to Section 2699 as the
2 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
3 defined.

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

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

22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
24 severally, as follows:

25 1. On behalf of the CALIFORNIA CLASS:
26 _____

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

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

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

- 12 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
13 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
14 action pursuant to Cal. Code of Civ. Proc. § 382;
15 B) Compensatory damages, according to proof at trial, including compensatory
16 damages for minimum, overtime and sick pay compensation due PLAINTIFF and
17 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
18 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
19 at the statutory rate;
20 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
21 in which a violation occurs and one hundred dollars (\$100) per each member of
22 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
23 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
24 an award of costs for violation of Cal. Lab. Code § 226;
25 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
26 the applicable IWC Wage Order;
27 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
28 1197; and,

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

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

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

8 4. On all claims:

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

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

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

14 Dated: August 14, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

17 By: /s/Norman B. Blumenthal
18 Norman B. Blumenthal
19 Kyle R. Nordrehaug
20 Nicholas J. De Blouw
21 *Attorneys for Plaintiff*

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DEMAND FOR A JURY TRIAL

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

Dated: August 14, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/Norman B. Blumenthal
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiff