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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHARLES SAN NICOLAS, PETER
CONTRERAS and DAVID PRICE, as
individuals, on behalf of themselves,
and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

WEST COVINA CORPORATE
FITNESS, INC., a California
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. BC616304

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

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

2. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 510, *et
seq.*;

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

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

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

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

DEMAND FOR A JURY TRIAL

1 Plaintiffs Charles San Nicolas, Peter Contreras and David Price (“PLAINTIFFS”),
2 individuals, on behalf of themselves and all other similarly situated current and former
3 employees, alleges on information and belief, except for his own acts and knowledge which are
4 based on personal knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant West Covina Corporate Fitness, Inc. (“DEFENDANT”) is a California
8 corporation and at all relevant times mentioned herein conducted and continues to conduct
9 substantial and regular business throughout California. DEFENDANT owns and operates co-ed
10 fitness centers in California.

11 2. Plaintiff Charles San Nicolas was employed by DEFENDANT in California as
12 a non-exempt employee entitled to overtime pay and meal and rest periods from July of 2014
13 through November of 2015. Plaintiff Charles San Nicolas was at all times relevant mentioned
14 herein classified by DEFENDANT as a non-exempt employee paid in whole or in part on an
15 hourly basis and received additional compensation from DEFENDANT in the form of non-
16 discretionary commission wages.

17 3. Plaintiff Peter Contreras employed by DEFENDANT in California as a non-
18 exempt employee entitled to overtime pay and meal and rest periods from October of 2012
19 through September of 2015. Plaintiff Contreras was at all times relevant mentioned herein
20 classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly
21 basis and received additional compensation from DEFENDANT in the form of non-
22 discretionary commission wages.

23 4. Plaintiff David Price was employed by DEFENDANT in California as a non-
24 exempt employee entitled to overtime pay and meal and rest periods from August of 2012
25 through May of 2013. Plaintiff Price was at all times relevant mentioned herein classified by
26 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
27 received additional compensation from DEFENDANT in the form of non-discretionary
28 commission wages.

1 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
2 class, defined as all individuals who are or previously were employed by DEFENDANT in
3 California classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
4 during the period beginning four (4) years prior to the filing of this Complaint and ending on
5 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
6 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
7 dollars (\$5,000,000.00).

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

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

28 8. The agents, servants and/or employees of the Defendants and each of them acting

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

8 9 **THE CONDUCT**

10 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
11 to fail to accurately calculate and pay PLAINTIFFS and the other members of the
12 CALIFORNIA CLASS for their overtime worked. DEFENDANT systematically, unlawfully
13 and unilaterally failed to accurately calculate wages for overtime worked by PLAINTIFFS and
14 other members of the CALIFORNIA CLASS in order to avoid paying these employees the
15 correct overtime compensation. As a result, PLAINTIFFS and the other members of the
16 CALIFORNIA CLASS forfeited wages due them for working overtime without compensation
17 at the correct overtime rates. DEFENDANT's uniform policy and practice to not pay the
18 members of the CALIFORNIA CLASS the correct overtime rate for all overtime worked in
19 accordance with applicable law is evidenced by DEFENDANT's business records.

20 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
21 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
22 meaning the time during which an employee is subject to the control of an employer, including
23 all the time the employee is suffered or permitted to work. During the CALIFORNIA CLASS
24 PERIOD, DEFENDANT did not have in place an immutable timekeeping system to accurately
25 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
26 of time these employees worked, including overtime worked. DEFENDANT required
27 PLAINTIFFS and CALIFORNIA CLASS Members to work off the clock without paying them
28 for all the time they were under DEFENDANT's control performing pre and post-shift duties,

specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFFS and CALIFORNIA CLASS Members to complete. As a result DEFENDANT's was able to and did in fact systematically, unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying these employees the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by regularly working without their time being accurately recorded and without compensation at the applicable overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, including overtime worked, is evidenced by DEFENDANT's business records.

11. California Labor Code Section 558 provides that "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty." The penalty for the initial violation is "fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." The penalty for each subsequent violation is "one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

12. Here, DEFENDANT knowingly caused a violation of the California Labor Code by directing its employees to alter the time records, or "shave" the time worked by PLAINTIFFS and other CALIFORNIA CLASS Members in order to avoid paying these employees for all their time worked, including overtime worked. DEFENDANT, through its agents, engaged in the unlawful alteration of CALIFORNIA CLASS Members' time records in order to reduce the time logged so as to not accurately reflect their actual time worked. As a direct result of DEFENDANT's conduct, PLAINTIFFS and other CALIFORNIA CLASS Members are underpaid for all time worked, including overtime worked, throughout their

1 employment with DEFENDANT.

2 13. Additionally, State law provides that employees must be paid overtime at one-
3 and-one-half times their “regular rate of pay.” PLAINTIFFS and other CALIFORNIA CLASS
4 Members were compensated at an hourly rate plus commission pay that was tied to specific
5 elements of an employee’s performance.

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

20 15. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
22 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
23 failed to compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the
24 correct rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT
25 was intended to purposefully avoid the payment of the correct overtime compensation as
26 required by California law which allowed DEFENDANT to illegally profit and gain an unfair
27 advantage over competitors who complied with the law. To the extent equitable tolling operates
28 to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS

1 PERIOD should be adjusted accordingly.

2 16. When PLAINTIFFS and other CALIFORNIA CLASS Members worked overtime
3 in the same pay period they earned commission wages and/or missed meal and rest breaks,
4 DEFENDANT also failed to provide PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
6 among other things, the correct overtime rate for overtime worked, including, work performed
7 in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the
8 correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that
9 every employer shall furnish each of his or her employees with an accurate itemized wage
10 statement in writing showing, among other things, gross wages earned and all applicable hourly
11 rates in effect during the pay period and the corresponding amount of time worked at each
12 hourly rate. As a result, from time to time DEFENDANT provided PLAINTIFFS and the other
13 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
14 § 226.

15 17. As a result of their rigorous work schedules, PLAINTIFFS and other
16 CALIFORNIA CLASS Members were also from time to time unable to take off duty breaks and
17 were not fully relieved of duty for meal periods. PLAINTIFFS and other CALIFORNIA
18 CLASS Members were required to perform work as ordered by DEFENDANT for more than
19 five (5) hours during a shift without receiving an off-duty meal break as evidenced by
20 DEFENDANT's business records. PLAINTIFFS and the other CALIFORNIA CLASS
21 Members therefore forfeited meal breaks without additional compensation and in accordance
22 with DEFENDANT's strict corporate policy and practice. Further, DEFENDANT failed to
23 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period
24 each workday in which these employees were required by DEFENDANT to work ten (10) hours
25 of work. As a result, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA
26 CLASS Members with legally required meal breaks is evidenced by DEFENDANT's business
27 records which contain no record of these breaks. PLAINTIFFS and other members of the
28 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and

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

2 18. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
3 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
4 being provided ten (10) minute rest periods. Further, these employees were denied their first
5 rest periods of at least ten (10) minutes for every shift worked of at least two (2) to four (4)
6 hours, a first and second rest period of at least ten (10) minutes for every shift worked of
7 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
8 minutes for every shift worked of ten (10) hours or more. PLAINTIFFS and other
9 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
10 As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS
11 Members were systemically denied their proper rest periods by DEFENDANT and
12 DEFENDANT's managers.

13 19. DEFENDANT as a matter of corporate policy, practice and procedure,
14 intentionally, knowingly and systematically fails to reimburse and indemnify PLAINTIFFS and
15 the other CALIFORNIA CLASS Members for required business expenses incurred by
16 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging
17 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
18 are required to indemnify employees for all expenses incurred in the course and scope of their
19 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
20 her employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
22 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
23 believed them to be unlawful."

24 20. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
25 Members as a business expense, were required by DEFENDANT to travel between locations
26 to assist in DEFENDANT's business where needed and as a result of and in furtherance of their
27 job duties as employees for DEFENDANT but were not reimbursed or indemnified by
28 DEFENDANT for the cost associated with traveling to DEFENDANT's other locations. As a

1 result, in the course of their employment with DEFENDANT, PLAINTIFFS and other members
2 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
3 were not limited to, costs related to travel for inter-storing all on behalf of and for the benefit
4 of DEFENDANT.

5 21. By reason of this uniform conduct applicable to PLAINTIFFS and all
6 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
7 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
8 (the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
9 calculate and record the correct overtime rate for the overtime worked by PLAINTIFFS and
10 other CALIFORNIA CLASS Members. The proper calculation of these employees’ overtime
11 hour rates is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard
12 of the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
13 required overtime compensation for work performed by the members of the CALIFORNIA
14 CLASS and violated the California Labor Code and regulations promulgated thereunder as
15 herein alleged.

16 22. Specifically as to PLAINTIFFS, his typical workweek required him to perform
17 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek.
18 DEFENDANT also consistently required PLAINTIFFS to work off the clock without paying
19 them for all the time he is under DEFENDANT’s control as described herein. As to
20 PLAINTIFFS’ pay, DEFENDANT provided compensation to him in the form of two
21 components. One component of PLAINTIFFS’ compensation is a base hourly wage. The
22 second component of PLAINTIFFS’ compensation was a non-discretionary commission wage.
23 DEFENDANT paid PLAINTIFFS the commission wage, so long as PLAINTIFFS met certain
24 predefined performance requirements. PLAINTIFFS met DEFENDANT’s predefined
25 eligibility performance requirements in various pay periods throughout their employment with
26 DEFENDANT and DEFENDANT paid PLAINTIFFS the commission wage. During these pay
27 periods in which PLAINTIFFS were paid the non-discretionary commission wages by
28 DEFENDANT, PLAINTIFFS also worked overtime for DEFENDANT, but DEFENDANT

1 never included the commission compensation in PLAINTIFFS' regular rate of pay for the
2 purposes of calculating what should have been PLAINTIFFS' accurate overtime rate and
3 thereby underpaid PLAINTIFFS for overtime worked throughout their employment with
4 DEFENDANT. The commission compensation paid by DEFENDANT constituted wages
5 within the meaning of the California Labor Code and thereby should have been part of
6 PLAINTIFFS' "regular rate of pay." PLAINTIFFS were also from time to time required to
7 perform work as ordered by the DEFENDANT for more than five (5) hours during a shift
8 without receiving a meal or rest break as evidenced by daily time reports for PLAINTIFFS.
9 This practice was a direct result of DEFENDANT's uniform policy and practice of denying
10 PLAINTIFFS uninterrupted, off duty thirty (30) minute meal breaks prior to his fifth (5th) hour
11 of work each day. PLAINTIFFS therefore forfeited meal breaks without additional
12 compensation and in accordance with DEFENDANT's strict corporate policy and practice.
13 When PLAINTIFFS worked overtime in the same pay period they earned commission wages
14 and/or missed meal and rest breaks, DEFENDANT also provided PLAINTIFFS with a paystub
15 that failed to accurately display PLAINTIFFS' correct rates of overtime pay for certain pay
16 periods in violation of Cal. Lab. Code § 226(a). The amount in controversy for PLAINTIFFS
17 individually do not exceed the sum or value of \$75,000.

18 **JURISDICTION AND VENUE**

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

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

1 CLASS and CALIFORNIA LABOR SUB-CLASS.

2
3 **THE CALIFORNIA CLASS**

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

13 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
14 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
15 accordingly.

16 27. The California Legislature has commanded that "all wages... ..earned by any
17 person in any employment are due and payable twice during each calendar month, on days
18 designated in advance by the employer as the regular paydays", and further that "[a]ny work
19 in excess of eight hours in one workday and any work in excess of 40 hours in any one
20 workweek . . . shall be compensated at the rate of no less than one and one-half times the
21 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare
22 Commission (IWC), however, is statutorily authorized to "establish exemptions from the
23 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
24 professional employees, provided [inter alia] that the employee is primarily engaged in duties
25 that meet the test of the exemption, [and] customarily and regularly exercises discretion and
26 independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither the
27 PLAINTIFFS nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
28 LABOR SUB-CLASS qualify for exemption from the above requirements.

1 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 wilfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
5 calculate and record overtime compensation for overtime worked by PLAINTIFFS and the
6 other members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permitted or suffered to permit this
8 overtime work.

9 29. DEFENDANT has the legal burden to establish that each and every
10 CALIFORNIA CLASS Member was paid the applicable rate for all overtime worked and to
11 accurately calculate the “regular rate of pay” by including the commission compensation that
12 PLAINTIFFS and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
13 The DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed
14 to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a
15 policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid the
16 applicable overtime rate for all overtime worked, so as to satisfy their burden. This common
17 business practice applicable to each and every CALIFORNIA CLASS Member can be
18 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
19 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
20 elements of this claim.

21 30. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
22 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
23 employee for all overtime worked at the applicable rate, as required by California Labor Code
24 §§ 204 and 510, *et seq.*

25 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 32. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- 1 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
2 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
3 place company policies, practices and procedures that failed to pay all
4 wages due the CALIFORNIA CLASS for all overtime worked, and failed
5 to accurately record the applicable rates of all overtime worked by the
6 CALIFORNIA CLASS;
- 7 (b) Committing an act of unfair competition in violation of the California
8 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
9 unlawfully, unfairly, and/or deceptively having in place a company policy,
10 practice and procedure that failed to correctly calculate overtime
11 compensation due to PLAINTIFFS and the members of the
12 CALIFORNIA CLASS;
- 13 (c) Committing an act of unfair competition in violation of the UCL, by
14 failing to have in place an immutable timekeeping system capable of
15 tracking, without mutation, all of the time PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS work that is not subject to
17 unilateral modification and manipulation;
- 18 (d) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 failing to provide mandatory meal and/or rest breaks to the PLAINTIFFS
21 and the CALIFORNIA CLASS members; and,
- 22 (e) Committing an act of unfair competition in violation of the California
23 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
24 violating Cal. Lab. Code § 2802 by failing to reimburse the PLAINTIFFS
25 and the CALIFORNIA CLASS members with necessary expenses
26 incurred in the discharge of their job duties.

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

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

Members.

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

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

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

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

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due. Including the correct overtime rate, for all worked by the members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be

1 necessary to prevent and remedy the conduct declared to constitute
2 unfair competition;

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

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

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

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

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

27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA CLASS Members will avoid asserting

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

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

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

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

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

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

26
27 **THE CALIFORNIA LABOR SUB-CLASS**

28 37. PLAINTIFFS further brings the Second, Third, Fourth and Fifth Causes of Action

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

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

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

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

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

28 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay

1 overtime compensation to members of the CALIFORNIA LABOR SUB-
2 CLASS in violation of the California Labor Code and California
3 regulations and the applicable California Wage Order;

4 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
5 entitled to overtime compensation for overtime worked under the overtime
6 pay requirements of California law;

7 (c) Whether DEFENDANT failed to accurately record the applicable
8 overtime rates for all overtime worked by PLAINTIFFS and the other
9 members of the CALIFORNIA LABOR SUB-CLASS;

10 (d) Whether DEFENDANT failed to provide PLAINTIFFS and the other
11 members of the CALIFORNIA LABOR SUB-CLASS with accurate
12 itemized wage statements;

13 (e) Whether DEFENDANT has engaged in unfair competition by the
14 above-listed conduct;

15 (f) The proper measure of damages and penalties owed to the members of the
16 CALIFORNIA LABOR SUB-CLASS; and,

17 (g) Whether DEFENDANT's conduct was willful.

18 42. DEFENDANT, as a matter of company policy, practice and procedure, failed to
19 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
20 Members and failed to provide accurate records of the applicable overtime rates for the
21 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
22 Members, including PLAINTIFFS, were non-exempt employees who were paid on an hourly
23 basis, were paid for overtime worked, and are paid additional non-discretionary commission
24 wages by DEFENDANT according to uniform and systematic company procedures as alleged
25 herein above. This business practice was uniformly applied to each and every member of the
26 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
27 adjudicated on a class-wide basis.

28 43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS

1 under California law by:

- 2 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
3 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
4 CLASS the correct overtime pay for which DEFENDANT was liable
5 pursuant to Cal. Lab. Code § 1194;
- 6 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
7 the members of the CALIFORNIA LABOR SUB-CLASS with an
8 accurate itemized statement in writing showing all accurate and applicable
9 overtime rates in effect during the pay period and the corresponding
10 amount of time worked at each overtime rate by the employee;
- 11 (c) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
12 and the CALIFORNIA LABOR SUB-CLASS members with necessary
13 expenses incurred in the discharge of their job duties;
- 14 (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
15 when an employee is discharged or quits from employment, the employer
16 must pay the employee all wages due without abatement, by failing to
17 tender full payment and/or restitution of wages owed or in the manner
18 required by California law to the members of the CALIFORNIA LABOR
19 SUB-CLASS who have terminated their employment.

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

- 22 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
23 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
24 Members is impracticable and the disposition of their claims as a class
25 will benefit the parties and the Court;
- 26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
27 that are raised in this Complaint are common to the CALIFORNIA
28 LABOR SUB-CLASS and will apply uniformly to every member of the

CALIFORNIA LABOR SUB-CLASS;

- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis and paid an additional non-discretionary commission wage who was subjected to DEFENDANT's practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,
- (d) The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

- 1) Inconsistent or varying adjudications with respect to individual

1 members of the CALIFORNIA LABOR SUB-CLASS which
2 would establish incompatible standards of conduct for the parties
3 opposing the CALIFORNIA LABOR SUB-CLASS; or,

4 2) Adjudication with respect to individual members of the
5 CALIFORNIA LABOR SUB-CLASS which would as a practical
6 matter be dispositive of interests of the other members not party to
7 the adjudication or substantially impair or impede their ability to
8 protect their interests.

9 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
10 or refused to act on grounds generally applicable to the CALIFORNIA
11 LABOR SUB-CLASS, making appropriate class-wide relief with respect
12 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
13 DEFENDANT uniformly failed to pay all wages due. Including the
14 correct overtime rate, for all overtime worked by the members of the
15 CALIFORNIA LABOR SUB-CLASS as required by law;

16 (c) Common questions of law and fact predominate as to the members of the
17 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
18 violations of California Law as listed above, and predominate over any
19 question affecting only individual CALIFORNIA LABOR SUB-CLASS
20 Members, and a Class Action is superior to other available methods for
21 the fair and efficient adjudication of the controversy, including
22 consideration of:

23 1) The interests of the members of the CALIFORNIA LABOR SUB-
24 CLASS in individually controlling the prosecution or defense of
25 separate actions in that the substantial expense of individual
26 actions will be avoided to recover the relatively small amount of
27 economic losses sustained by the individual CALIFORNIA
28 LABOR SUB-CLASS Members when compared to the substantial

1 expense and burden of individual prosecution of this litigation;

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

4 A. Inconsistent or varying adjudications with respect to
5 individual members of the CALIFORNIA LABOR SUB-
6 CLASS, which would establish incompatible standards of
7 conduct for the DEFENDANT; and/or,

8 B. Adjudications with respect to individual members of the
9 CALIFORNIA LABOR SUB-CLASS would as a practical
10 matter be dispositive of the interests of the other members
11 not parties to the adjudication or substantially impair or
12 impede their ability to protect their interests;

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

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

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

27 (a) The questions of law and fact common to the CALIFORNIA LABOR
28 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) PLAINTIFFS, 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

1 CLASS Members classified as non-exempt employees during the
2 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

7
8 **FIRST CAUSE OF ACTION**

9 **For Unlawful Business Practices**

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

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

12 47. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
13 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 46 of this
14 Complaint.

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

17 49. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
18 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
19 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
20 competition as follows:

21 Any person who engages, has engaged, or proposes to engage in unfair
22 competition may be enjoined in any court of competent jurisdiction. The court
23 may make such orders or judgments, including the appointment of a receiver, as
24 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.

25 Cal. Bus. & Prof. Code § 17203.

26 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
27 engage in a business practice which violated California law, including but not limited to, the
28 applicable Wage Order(s), the California Code of Regulations and the California Labor Code

1 including Sections 204, 226.7, 510, 512, 1194, 1198, 2802 for which this Court should issue
2 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
3 necessary to prevent and remedy the conduct held to constitute unfair competition, including
4 restitution of wages wrongfully withheld.

5 51. By the conduct alleged herein, DEFENDANT's practices were unlawful and
6 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
7 unscrupulous or substantially injurious to employees, and were without valid justification or
8 utility for which this Court should issue equitable and injunctive relief pursuant to Section
9 17203 of the California Business & Professions Code, including restitution of wages wrongfully
10 withheld.

11 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
12 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFFS, and
13 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
14 accurately to record the applicable rate of all overtime worked, failed to provide reimbursement
15 for necessary business expenses incurred by PLAINTIFFS and the CALIFORNIA CLASS
16 Members, and failed to provide the required amount of overtime compensation due to a
17 systematic miscalculation of the overtime rate that cannot be justified, pursuant to the applicable
18 Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code
19 §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
20 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

25 54. By the conduct alleged herein, DEFENDANT's practices were also unfair and
26 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
27 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members
28 as required by Cal. Lab. Code §§ 226.7 and 512.

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

6 56. PLAINTIFFS further demand on behalf of themselves and on behalf of each
7 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
8 was not timely provided as required by law.

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

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

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

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

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

SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 204, 510, 1194 and 1198]

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

62. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 61 of this Complaint.

63. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

65. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per

1 workweek unless they receive additional compensation beyond their regular wages in amounts
2 specified by law.

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

7 67. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS
8 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
9 correct applicable overtime rate for the amount of overtime they work. As set forth herein,
10 DEFENDANT's uniform policy and practice is to unlawfully and intentionally deny timely
11 payment of wages due for the overtime worked by PLAINTIFFS and the other members of the
12 CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay these employees
13 the correct applicable overtime wages for all overtime worked.

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

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

26 70. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
28 receive full compensation for all overtime worked.

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

9 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
10 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
11 that they are entitled to, constituting a failure to pay all earned wages.

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

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

25 75. DEFENDANT knew or should have known that PLAINTIFFS and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
27 overtime worked. DEFENDANT systematically elected, either through intentional malfeasance
28 or gross nonfeasance, to not pay employees for their labor as a matter of uniform company

1 policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by
2 refusing to pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
3 CLASS the applicable overtime rate.

4 76. 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 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 77. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS therefore request recovery of all unpaid wages, including overtime wages, according
14 to proof, interest, statutory costs, as well as the assessment of any statutory penalties against
15 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
16 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
17 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
18 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
19 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
20 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
21 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
22 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
23 statutory costs.
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1 80. When PLAINTIFFS and other CALIFORNIA CLASS Members worked overtime
2 in the same pay period they earned commission wages, worked off-the-clock, and/or missed
3 meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed
4 to provide an accurate wage statement in writing that properly and accurately itemized the
5 effective overtime rates of pay for overtime worked by PLAINTIFFS and the other members
6 of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct
7 overtime wages earned by the employees.

8 81. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
9 § 226, causing injury and damages to PLAINTIFFS and the other members of the
10 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
11 expended calculating the correct rates for the overtime worked and the amount of employment
12 taxes which were not properly paid to state and federal tax authorities. These damages are
13 difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA
14 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
15 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
16 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
17 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
18 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS
19 herein).

20
21 **FOURTH CAUSE OF ACTION**

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

23 **[Cal. Lab. Code § 2802]**

24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**

26 82. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members
27 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
28 through 81 of this Complaint.

1 83. Cal. Lab. Code § 2802 provides, in relevant part, that:

2 An employer shall indemnify his or her employee for all necessary expenditures
3 or losses incurred by the employee in direct consequence of the discharge of his
4 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.

5 84. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
6 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
7 CLASS members for required expenses incurred in the discharge of their job duties for
8 DEFENDANT's benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFFS and
9 the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but are not
10 limited to, travel to DEFENDANT's other gym locations all on behalf of and for the benefit
11 of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not
12 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS members for
13 expenses resulting from travel to and from other locations within the course and scope of
14 their employment for DEFENDANT. These expenses were necessary to complete their
15 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
16 waiver of this expectation. Although these expenses were necessary expenses incurred by
17 the PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS members, DEFENDANT
18 failed to indemnify and reimburse the PLAINTIFFS and the CALIFORNIA LABOR
19 SUBCLASS members for these expenses as an employer is required to do under the laws
20 and regulations of California.

21 85. PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS members were
22 forced by the expectation of DEFENDANT to contribute to the DEFENDANT's business
23 expenses, which expenses must be refunded by DEFENDANT to each member of the
24 CALIFORNIA LABOR SUBCLASS.

25 86. PLAINTIFFS therefore demands reimbursement for expenditures or losses
26 incurred by her and the CALIFORNIA LABOR SUBCLASS members in the discharge of
27 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
28 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

1 **FIFTH CAUSE OF ACTION**

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

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

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

6 87. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1
8 through 86 of this Complaint.

9 88. Cal. Lab. Code § 200 provides that:

10 As used in this article:

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

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

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

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

22 If an employee not having a written contract for a definite period quits his or
23 her employment, his or her wages shall become due and payable not later than
24 72 hours thereafter, unless the employee has given 72 hours previous notice of
25 his or her intention to quit, in which case the employee is entitled to his or her
26 wages at the time of quitting. Notwithstanding any other provision of law, an
27 employee who quits without providing a 72-hour notice shall be entitled to
28 receive payment by mail if he or she so requests and designates a mailing
address. The date of the mailing shall constitute the date of payment for
purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

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

92. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
employee who is discharged or who quits, the wages of the employee shall

1 continue as a penalty from the due date thereof at the same rate until paid or
2 until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

3 93. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
4 CLASS Members has terminated and DEFENDANT has not tendered payment of overtime
5 wages, to these employees who actually worked overtime, as required by law.

6 94. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
7 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has
8 terminated, PLAINTIFFS demand up to thirty days of pay as penalty for not paying all
9 wages due at time of termination for all employees who terminated employment during the
10 CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment
11 of all wages due, plus interest and statutory costs as allowed by law.

12
13 **SIXTH CAUSE OF ACTION**

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

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

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

17 93. PLAINTIFFS incorporate by reference the allegations set forth in paragraphs
18 1-92, supra, as though fully set forth at this point.

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

1 95. Plaintiff Charles San Nicolas, and such persons that may be added from time
2 to time who satisfy the requirements and exhaust the administrative procedures under the
3 Private Attorney General Act, brings this Representative Action on behalf of the State of
4 California with respect to themselves and all individuals who are or previously were
5 employed by DEFENDANT in California and classified as non-exempt employees during
6 the time period of April 8, 2015 until the present (the "AGGRIEVED EMPLOYEES").

7 96. On April 25, 2016, Plaintiff Charles San Nicolas gave written notice by
8 certified mail to the Labor and Workforce Development Agency (the "Agency") and the
9 employer of the specific provisions of this code alleged to have been violated as required by
10 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
11 herein. The statutory waiting period for Plaintiff Charles San Nicolas to add these
12 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff
13 Charles San Nicolas may now commence a representative civil action under PAGA
14 pursuant to Section 2699 as the proxy of the State of California with respect to all
15 AGGRIEVED EMPLOYEES as herein defined.

16 97. The policies, acts and practices heretofore described were and are an unlawful
17 business act or practice because Defendant (a) failed to properly record and pay Plaintiff
18 Charles San Nicolas and the other AGGRIEVED EMPLOYEES for all of the hours they
19 worked, including overtime hours in violation of the Wage Order, (b) failed to provide
20 accurate itemized wage statements, and (c) failed to timely pay wages, all in violation of the
21 applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to
22 Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 256, 510, 512, 1194, 1198, 2802 and the
23 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result
24 of such conduct. Plaintiff Charles San Nicolas hereby seeks recovery of civil penalties as
25 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
26 the State of California for the illegal conduct perpetrated on Plaintiff Charles San Nicolas
27 and the other AGGRIEVED EMPLOYEES.
28

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

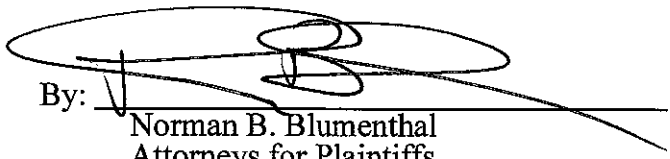
15 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 16 A) That the Court certify the Second, Third, and Fourth Causes of Action asserted
17 by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal.
18 Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due PLAINTIFFS and the other members
21 of the CALIFORNIA LABOR SUB-CLASS, during the applicable
22 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
23 statutory rate;
24 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
25 period in which a violation occurs and one hundred dollars (\$100) per each
26 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
27 subsequent pay period, not exceeding an aggregate penalty of four thousand
28 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

- 1 D) The amount of the expenses PLAINTIFFS and each member of the
2 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
3 plus interest, and costs of suit; and
4 E) The wages of all terminated employees from the CALIFORNIA LABOR
5 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
6 or until an action therefore is commenced, in accordance with Cal. Lab. Code
7 § 203.
- 8 3. On behalf of the State of California and with respect to all AGGRIEVED
9 EMPLOYEES:
10 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
11 General Act of 2004
- 12 4. On all claims:
13 A) An award of interest, including prejudgment interest at the legal rate;
14 B) Such other and further relief as the Court deems just and equitable; and,
15 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
16 including, but not limited to, pursuant to Labor Code §218.5, §226, §1194 and/or §
17 2802.

18
19 Dated: January 30, 2018

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

20
21
22 By: 

Norman B. Blumenthal
Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

Dated: January 30, 2018

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiffs

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EXHIBIT #1

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
5

April 25, 2016
CA1196

VIA CERTIFIED MAIL

Labor and Workforce Development
Agency
Certified Mail # 70142120000378195468
800 Capitol Mall, Suite 5000 MIC-55
Sacramento, CA 95814

West Covina Corporate Fitness, Inc.
Certified Mail # 70142120000378195475
Steven Sweeney
19835 Nordhoff Street, Building 1A Unit B
Northridge, CA 91324

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512 1194, 1198, 2802, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Charles San Nicolas ("Plaintiff"), and other aggrieved employees in a lawsuit against West Covina Corporate Fitness, Inc. ("Defendant"). Plaintiff was employed by Defendant in California from July of 2014 to November of 2015 and was at all times classified as a non-exempt employee who was paid in whole or in part on an hourly basis and entitled to overtime wages and the legally required meal and rest periods. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of the time they worked, including overtime worked. Defendant also failed to reimburse Plaintiff and other aggrieved employees for their business expenses that were necessary to complete their job duties for Defendant. As a consequence of the aforementioned violations, the Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). The Defendant's work schedule required Plaintiff and other aggrieved employees to work without being provided the legally required meal and rest periods. Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a) 226.7, 510, 512, 1194, 1198, 2802, Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information

provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable the Plaintiff to proceed with the Complaint filed in the Los Angeles County Superior Court Case No. BC616304, against Defendant as authorized by California Labor Code section 2695, *et seq.* The pending lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

West Anna Corp. Fitness, Inc.
Steven Sweeney
19835 Nordhoff Street
Bldg 1A, Unit B
Northridge, CA 91324

CA1196

2. Article Number:
(Transfer from s)

7014 2120 0003 7819 7493

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *P.B.C.*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Paul Becker

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail®

☐ Priority Mail Express™

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3811, July 2013

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Labor's Nurseries Dev. Agency
800 Capitol Mall, Suite 500
NJC - 55
Sacramento, CA 95814

COMPLETE THIS SECTION ON DELIVERY

A. Signature 800 Capitol Mall ☐ Agent
Sacramento, CA 95814 ☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery
4-27

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from service label)

7014 2120 0003 7819 5468

Domestic Return Receipt

PS Form 3811, July 2013