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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHARLES SAN NICOLAS, an
individual, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No. BC616304

**FIRST 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 Plaintiff Charles San Nicolas (“PLAINTIFF”), an individual, on behalf of himself and
2 all other similarly situated current and former employees, alleges on information and belief,
3 except for his own acts and knowledge which are based on personal knowledge, the following:
4

5 **THE PARTIES**

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

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

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

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

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

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

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

23 24 **THE CONDUCT**

25 7. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
26 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
27 CLASS for their overtime worked. DEFENDANT systematically, unlawfully and unilaterally
28 failed to accurately calculate wages for overtime worked by PLAINTIFF and other members

1 of the CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
2 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
3 forfeited wages due them for working overtime without compensation at the correct overtime
4 rates. DEFENDANT's uniform policy and practice to not pay the members of the
5 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
6 applicable law is evidenced by DEFENDANT's business records.

7 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
8 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
9 meaning the time during which an employee is subject to the control of an employer, including
10 all the time the employee is suffered or permitted to work. During the CALIFORNIA CLASS
11 PERIOD, DEFENDANT did not have in place an immutable timekeeping system to accurately
12 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
13 of time these employees worked, including overtime worked. DEFENDANT required
14 PLAINTIFF and CALIFORNIA CLASS Members to work off the clock without paying them
15 for all the time they were under DEFENDANT's control performing pre and post-shift duties,
16 specifically by failing to provide enough labor hours to accomplish all the job tasks that
17 DEFENDANT expected PLAINTIFF and CALIFORNIA CLASS Members to complete. As
18 a result DEFENDANT's was able to and did in fact systematically, unlawfully, and unilaterally
19 alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and the
20 members of the CALIFORNIA CLASS in order to avoid paying these employees the applicable
21 overtime compensation for overtime worked. As a result, PLAINTIFF and other CALIFORNIA
22 CLASS Members forfeited time worked by regularly working without their time being
23 accurately recorded and without compensation at the applicable overtime rates.
24 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
25 CLASS Members for all time worked, including overtime worked, is evidenced by
26 DEFENDANT's business records.

27 9. California Labor Code Section 558 provides that "[a]ny employer or other person
28 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter

1 or any provision regulating hours and days of work in any order of the Industrial Welfare
2 Commission shall be subject to a civil penalty.” The penalty for the initial violation is “fifty
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was
4 underpaid in addition to an amount sufficient to recover underpaid wages.” The penalty for
5 each subsequent violation is “one hundred dollars (\$100) for each underpaid employee for each
6 pay period for which the employee was underpaid in addition to an amount sufficient to recover
7 underpaid wages.”

8 10. Here, DEFENDANT knowingly caused a violation of the California Labor Code
9 by directing its employees to alter the time records, or “shave” the time worked by PLAINTIFF
10 and other CALIFORNIA CLASS Members in order to avoid paying these employees for all
11 their time worked, including overtime worked. DEFENDANT, through its agents, engaged in
12 the unlawful alteration of CALIFORNIA CLASS Members’ time records in order to reduce the
13 time logged so as to not accurately reflect their actual time worked. As a direct result of
14 DEFENDANT’s conduct, PLAINTIFF and other CALIFORNIA CLASS Members 34re
15 underpaid for all time worked, including overtime worked, throughout their employment with
16 DEFENDANT.

17 11. Additionally, State law provides that employees must be paid overtime at one-
18 and-one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS
19 Members were compensated at an hourly rate plus commission pay that was tied to specific
20 elements of an employee’s performance.

21 12. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
22 Members’ compensation was DEFENDANT’s non-discretionary commission program that paid
23 PLAINTIFF and other CALIFORNIA CLASS Members commission wages based on their
24 performance for DEFENDANT. The non-discretionary commission program provided all
25 employees paid on an hourly basis with commission compensation when the employees met the
26 various performance goals set by DEFENDANT. However, when calculating the regular rate
27 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
28 DEFENDANT failed to include the commission compensation as part of the employees’

1 “regular rate of pay” for purposes of calculating overtime pay. Management and supervisors
2 described the commission program to potential and new employees as part of the compensation
3 package. As a matter of law, the commission compensation received by PLAINTIFF and other
4 CALIFORNIA CLASS Members must be included in the “regular rate of pay.” The failure to
5 do so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and
6 other CALIFORNIA CLASS Members by DEFENDANT.

7 13. In violation of the applicable sections of the California Labor Code and the
8 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
9 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
10 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the
11 correct rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT
12 was intended to purposefully avoid the payment of the correct overtime compensation as
13 required by California law which allowed DEFENDANT to illegally profit and gain an unfair
14 advantage over competitors who complied with the law. To the extent equitable tolling operates
15 to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
16 PERIOD should be adjusted accordingly.

17 14. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
18 in the same pay period they earned commission wages and/or missed meal and rest breaks,
19 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
20 CLASS with complete and accurate wage statements which failed to show, among other things,
21 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
22 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
23 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
24 furnish each of his or her employees with an accurate itemized wage statement in writing
25 showing, among other things, gross wages earned and all applicable hourly rates in effect during
26 the pay period and the corresponding amount of time worked at each hourly rate. As a result,
27 from time to time DEFENDANT provided PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

1 15. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA CLASS Members were also from time to time unable to take off duty breaks and
3 were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS
4 Members were required to perform work as ordered by DEFENDANT for more than five (5)
5 hours during a shift without receiving an off-duty meal break as evidenced by DEFENDANT's
6 business records. PLAINTIFF and the other CALIFORNIA CLASS Members therefore
7 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
8 strict corporate policy and practice. Further, DEFENDANT failed to provide PLAINTIFF and
9 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which
10 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,
11 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
12 legally required meal breaks is evidenced by DEFENDANT's business records which contain
13 no record of these breaks. PLAINTIFF and other members of the CALIFORNIA CLASS
14 therefore forfeited meal breaks without additional compensation and in accordance with
15 DEFENDANT's strict corporate policy and practice.

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

27 17. DEFENDANT as a matter of corporate policy, practice and procedure,
28 intentionally, knowingly and systematically fails to reimburse and indemnify PLAINTIFF and

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

10 18. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
11 Members as a business expense, were required by DEFENDANT to travel between locations
12 to assist in DEFENDANT's business where needed and as a result of and in furtherance of their
13 job duties as employees for DEFENDANT but were not reimbursed or indemnified by
14 DEFENDANT for the cost associated with traveling to DEFENDANT's other locations. As a
15 result, in the course of their employment with DEFENDANT PLAINTIFF and other members
16 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
17 were not limited to, costs related to travel for inter-storing all on behalf of and for the benefit
18 of DEFENDANT.

19 19. By reason of this uniform conduct applicable to PLAINTIFF and all
20 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
21 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
22 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
23 calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and other
24 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour
25 rates is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
26 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
27 required overtime compensation for work performed by the members of the CALIFORNIA
28 CLASS and violated the California Labor Code and regulations promulgated thereunder as

1 herein alleged.

2 20. Specifically as to PLAINTIFF, his typical workweek required him to perform
3 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek.
4 DEFENDANT also consistently required PLAINTIFF to work off the clock without paying him
5 for all the time he is under DEFENDANT's control as described herein. As to PLAINTIFF's
6 pay, DEFENDANT provided compensation to him in the form of two components. One
7 component of PLAINTIFF's compensation is a base hourly wage. The second component of
8 PLAINTIFF's compensation was a non-discretionary commission wage. DEFENDANT paid
9 PLAINTIFF the commission wage, so long as PLAINTIFF met certain predefined performance
10 requirements. PLAINTIFF met DEFENDANT's predefined eligibility performance
11 requirements in various pay periods throughout his employment with DEFENDANT and
12 DEFENDANT paid PLAINTIFF the commission wage. During these pay periods in which
13 PLAINTIFF was paid the non-discretionary commission wages by DEFENDANT, PLAINTIFF
14 also worked overtime for DEFENDANT, but DEFENDANT never included the commission
15 compensation in PLAINTIFF's regular rate of pay for the purposes of calculating what should
16 have been PLAINTIFF's accurate overtime rate and thereby underpaid PLAINTIFF for
17 overtime worked throughout his employment with DEFENDANT. The commission
18 compensation paid by DEFENDANT constituted wages within the meaning of the California
19 Labor Code and thereby should have been part of PLAINTIFF's "regular rate of pay."
20 PLAINTIFF was also from time to time required to perform work as ordered by the
21 DEFENDANT for more than five (5) hours during a shift without receiving a meal or rest break
22 as evidenced by daily time reports for PLAINTIFF. This practice was a direct result of
23 DEFENDANT's uniform policy and practice of denying PLAINTIFF uninterrupted, off duty
24 thirty (30) minute meal breaks prior to his fifth (5th) hour of work each day. PLAINTIFF
25 therefore forfeited meal breaks without additional compensation and in accordance with
26 DEFENDANT's strict corporate policy and practice. When PLAINTIFF worked overtime in
27 the same pay period he earned commission wages and/or missed meal and rest breaks,
28 DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately display

1 PLAINTIFF's correct rates of overtime pay for certain pay periods in violation of Cal. Lab.
2 Code § 226(a). The amount in controversy for PLAINTIFF individually does not exceed the
3 sum or value of \$75,000.

4 **JURISDICTION AND VENUE**

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

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

15 **THE CALIFORNIA CLASS**

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

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

1 accordingly.

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

15 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
16 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
17 requirements, and the applicable provisions of California law, intentionally, knowingly, and
18 wilfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
19 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other
20 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
21 work, required employees to perform this work and permitted or suffered to permit this
22 overtime work.

23 27. DEFENDANT has the legal burden to establish that each and every
24 CALIFORNIA CLASS Member was paid the applicable rate for all overtime worked and to
25 accurately calculate the “regular rate of pay” by including the commission compensation that
26 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT. The
27 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
28 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy

1 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
2 overtime rate for all overtime worked, so as to satisfy their burden. This common business
3 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on
4 a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code
5 §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
6 claim.

7 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
8 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
9 employee for all overtime worked at the applicable rate, as required by California Labor Code
10 §§ 204 and 510, *et seq.*

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

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

- 15 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
16 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
17 place company policies, practices and procedures that failed to pay all
18 wages due the CALIFORNIA CLASS for all overtime worked, and failed
19 to accurately record the applicable rates of all overtime worked by the
20 CALIFORNIA CLASS;
- 21 (b) Committing an act of unfair competition in violation of the California
22 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
23 unlawfully, unfairly, and/or deceptively having in place a company policy,
24 practice and procedure that failed to correctly calculate overtime
25 compensation due to PLAINTIFF and the members of the CALIFORNIA
26 CLASS;
- 27 (c) Committing an act of unfair competition in violation of the UCL, by
28 failing to have in place an immutable timekeeping system capable of

1 tracking, without mutation, all of the time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS work that is not subject to
3 unilateral modification and manipulation;

4 (d) Committing an act of unfair competition in violation of the California
5 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
6 failing to provide mandatory meal and/or rest breaks to the PLAINTIFF
7 and the CALIFORNIA CLASS members; and,

8 (e) Committing an act of unfair competition in violation of the California
9 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
10 violating Cal. Lab. Code § 2802 by failing to reimburse the PLAINTIFF
11 and the CALIFORNIA CLASS members with necessary expenses
12 incurred in the discharge of their job duties.

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

15 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
16 that the joinder of all such persons is impracticable and the disposition of
17 their claims as a class will benefit the parties and the Court;

18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
19 that are raised in this Complaint are common to the CALIFORNIA
20 CLASS will apply uniformly to every member of the CALIFORNIA
21 CLASS;

22 (c) The claims of the representative PLAINTIFF are typical of the claims of
23 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
24 other members of the CALIFORNIA CLASS, was a non-exempt
25 employee paid on an hourly basis and paid an additional non-discretionary
26 commission wage who was subjected to the DEFENDANT's practice and
27 policy which failed to pay the correct rate of overtime wages due to the
28 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA

1 CLASS and thereby systematically underpaid overtime compensation to
2 the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
3 result of DEFENDANT's employment practices. PLAINTIFF and the
4 members of the CALIFORNIA CLASS were and are similarly or
5 identically harmed by the same unlawful, deceptive, unfair and pervasive
6 pattern of misconduct engaged in by DEFENDANT; and,

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

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

- 17 (a) Without class certification and determination of declaratory, injunctive,
18 statutory and other legal questions within the class format, prosecution of
19 separate actions by individual members of the CALIFORNIA CLASS will
20 create the risk of:
- 21 1) Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA CLASS which would establish
23 incompatible standards of conduct for the parties opposing the
24 CALIFORNIA CLASS; and/or,
 - 25 2) Adjudication with respect to individual members of the
26 CALIFORNIA CLASS which would as a practical matter be
27 dispositive of interests of the other members not party to the
28

1 adjudication or substantially impair or impede their ability to
2 protect their interests.

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

9 1) With respect to the First Cause of Action, the final relief on behalf
10 of the CALIFORNIA CLASS sought does not relate exclusively to
11 restitution because through this claim PLAINTIFF seeks
12 declaratory relief holding that the DEFENDANT's policy and
13 practices constitute unfair competition, along with declaratory
14 relief, injunctive relief, and incidental equitable relief as may be
15 necessary to prevent and remedy the conduct declared to constitute
16 unfair competition;

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

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

1 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 CLASS, which
6 would establish incompatible standards of conduct for the
7 DEFENDANT; and/or,

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

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

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

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

26 (a) The questions of law and fact common to the CALIFORNIA CLASS
27 predominate over any question affecting only individual CALIFORNIA
28

1 CLASS Members because the DEFENDANT's employment practices are
2 uniform and systematically applied with respect to the CALIFORNIA
3 CLASS;

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

10 (c) The members of the CALIFORNIA CLASS are so numerous that it is
11 impractical to bring all members of the CALIFORNIA CLASS before the
12 Court;

13 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
14 able to obtain effective and economic legal redress unless the action is
15 maintained as a Class Action;

16 (e) There is a community of interest in obtaining appropriate legal and
17 equitable relief for the acts of unfair competition, statutory violations and
18 other improprieties, and in obtaining adequate compensation for the
19 damages and injuries which DEFENDANT's actions have inflicted upon
20 the CALIFORNIA CLASS;

21 (f) There is a community of interest in ensuring that the combined assets of
22 DEFENDANT are sufficient to adequately compensate the members of
23 the CALIFORNIA CLASS for the injuries sustained;

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

27 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
28

1 the business records of DEFENDANT. The CALIFORNIA CLASS
2 consists of all individuals who are or previously were employed by
3 DEFENDANT in California and classified as non-exempt employees
4 during the CALIFORNIA CLASS PERIOD; and,

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

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

14
15 **THE CALIFORNIA LABOR SUB-CLASS**

16 35. PLAINTIFF further brings the Second, Third, Fourth and Fifth Causes of Action
17 on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS
18 classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time
19 during the period three (3) years prior to the filing of the complaint and ending on the date as
20 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
21 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
22 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

23 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
24 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
27 compensation for the overtime worked by PLAINTIFF and the other members of the
28

1 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
2 work, required employees to perform this work and permitted or suffered to permit this
3 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
4 CLASS Members overtime wages at the correct amount to which these employees were entitled
5 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
7 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

13 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
14 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 17 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
18 overtime compensation to members of the CALIFORNIA LABOR SUB-
19 CLASS in violation of the California Labor Code and California
20 regulations and the applicable California Wage Order;
- 21 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
22 entitled to overtime compensation for overtime worked under the overtime
23 pay requirements of California law;
- 24 (c) Whether DEFENDANT failed to accurately record the applicable
25 overtime rates for all overtime worked by PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS;
- 27 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
28

1 members of the CALIFORNIA LABOR SUB-CLASS with accurate
2 itemized wage statements;

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

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

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

8 40. DEFENDANT, as a matter of company policy, practice and procedure, failed to
9 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
10 Members and failed to provide accurate records of the applicable overtime rates for the
11 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
12 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly
13 basis, were paid for overtime worked, and are paid additional non-discretionary commission
14 wages by DEFENDANT according to uniform and systematic company procedures as alleged
15 herein above. This business practice was uniformly applied to each and every member of the
16 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
17 adjudicated on a class-wide basis.

18 41. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
19 under California law by:

20 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
21 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
22 CLASS the correct overtime pay for which DEFENDANT was liable
23 pursuant to Cal. Lab. Code § 1194;

24 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
26 itemized statement in writing showing all accurate and applicable
27 overtime rates in effect during the pay period and the corresponding
28

1 amount of time worked at each overtime rate by the employee;

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

5 (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
6 when an employee is discharged or quits from employment, the employer
7 must pay the employee all wages due without abatement, by failing to
8 tender full payment and/or restitution of wages owed or in the manner
9 required by California law to the members of the CALIFORNIA LABOR
10 SUB-CLASS who have terminated their employment.

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

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

17 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
18 that are raised in this Complaint are common to the CALIFORNIA
19 LABOR SUB-CLASS and will apply uniformly to every member of the
20 CALIFORNIA LABOR SUB-CLASS;

21 (c) The claims of the representative PLAINTIFF are typical of the claims of
22 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
23 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
24 was a non-exempt employee paid on an hourly basis and paid an
25 additional non-discretionary commission wage who was subjected to
26 DEFENDANT's practice and policy which failed to pay the correct rate
27 of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for
28

1 all overtime worked. PLAINTIFF sustained economic injury as a result
2 of DEFENDANT's employment practices. PLAINTIFF and the members
3 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
4 identically harmed by the same unlawful, deceptive, unfair and pervasive
5 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

- 20 1) Inconsistent or varying adjudications with respect to individual
21 members of the CALIFORNIA LABOR SUB-CLASS which
22 would establish incompatible standards of conduct for the parties
23 opposing the CALIFORNIA LABOR SUB-CLASS; or,
24 2) Adjudication with respect to individual members of the
25 CALIFORNIA LABOR SUB-CLASS which would as a practical
26 matter be dispositive of interests of the other members not party to
27 the adjudication or substantially impair or impede their ability to
28

1 protect their interests.

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

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

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

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

25 A. Inconsistent or varying adjudications with respect to
26 individual members of the CALIFORNIA LABOR SUB-
27 CLASS, which would establish incompatible standards of
28

1 conduct for the DEFENDANT; and/or,

2 B. Adjudications with respect to individual members of the
3 CALIFORNIA LABOR SUB-CLASS would as a practical
4 matter be dispositive of the interests of the other members
5 not parties to the adjudication or substantially impair or
6 impede their ability to protect their interests;

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

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

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

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

24 (b) A Class Action is superior to any other available method for the fair and
25 efficient adjudication of the claims of the members of the CALIFORNIA
26 LABOR SUB-CLASS because in the context of employment litigation a
27 substantial number of individual CALIFORNIA LABOR SUB-CLASS
28

1 Members will avoid asserting their rights individually out of fear of
2 retaliation or adverse impact on their employment;

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

6 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
7 Members, will not be able to obtain effective and economic legal redress
8 unless the action is maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and
10 equitable relief for the acts of unfair competition, statutory violations and
11 other improprieties, and in obtaining adequate compensation for the
12 damages and injuries which DEFENDANT's actions have inflicted upon
13 the CALIFORNIA LABOR SUB-CLASS;

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

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

21 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANT. The
23 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
24 CLASS Members classified as non-exempt employees during the
25 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

26 (i) Class treatment provides manageable judicial treatment calculated to bring
27 a efficient and rapid conclusion to all litigation of all wage and hour
28

1 related claims arising out of the conduct of DEFENDANT as to the
2 members of the CALIFORNIA LABOR SUB-CLASS.

3
4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

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

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

8 45. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 44 of this
10 Complaint.

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

13 47. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
14 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
15 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
16 competition as follows:

17 Any person who engages, has engaged, or proposes to engage in unfair
18 competition may be enjoined in any court of competent jurisdiction. The court
19 may make such orders or judgments, including the appointment of a receiver, as
20 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.

21 Cal. Bus. & Prof. Code § 17203.

22 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
23 engage in a business practice which violated California law, including but not limited to, the
24 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
25 including Sections 204, 226.7, 510, 512, 1194, 1198, 2802 for which this Court should issue
26 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
27 necessary to prevent and remedy the conduct held to constitute unfair competition, including
28

1 restitution of wages wrongfully withheld.

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

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

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

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

26 53. Therefore, PLAINTIFF demand on behalf of himself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
28 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay

1 for each workday in which a second off-duty meal period was not timely provided for each ten
2 (10) hours of work.

3 54. PLAINTIFF further demand on behalf of himself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
5 was not timely provided as required by law.

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

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

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

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

26 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.

1 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5
6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Overtime Compensation**

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

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

11 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
12 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through
13 59 of this Complaint.

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

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

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

28 64. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,

1 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
2 Code § 1198 further states that the employment of an employee for longer hours than those
3 fixed by the Industrial Welfare Commission is unlawful.

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

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

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

23 68. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
25 receive full compensation for all overtime worked.

26 69. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
2 subject to a valid collective bargaining agreement that would preclude the causes of action
3 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
4 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
5 negotiable, non-waiveable rights provided by the State of California.

6 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
8 they are entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

21
22 **THIRD CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 226]**

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

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

1 75 of this Complaint.

2 77. Cal. Labor Code § 226 provides that an employer must furnish employees with
3 an “accurate itemized” statement in writing showing:

4 (1) gross wages earned,

5 (2) total hours worked by the employee, except for any employee whose compensation
6 is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
8 Commission,

9 (3) the number of piecerate units earned and any applicable piece rate if the employee
10 is paid on a piece-rate basis,

11 (4) all deductions, provided that all deductions made on written orders of the employee
12 may be aggregated and shown as one item,

13 (5) net wages earned,

14 (6) the inclusive dates of the period for which the employee is paid,

15 (7) the name of the employee and his or her social security number, except that by
16 January 1, 2008, only the last four digits of his or her social security number or an
17 employee identification number other than a social security number may be shown on
18 the itemized statement,

19 (8) the name and address of the legal entity that is the employer, and

20 (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee.

22 78. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
23 in the same pay period they earned commission wages, worked off-the-clock, and/or missed
24 meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed
25 to provide an accurate wage statement in writing that properly and accurately itemized the
26 effective overtime rates of pay for overtime worked by PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct
28 overtime wages earned by the employees.

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

FOURTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

80. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

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

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

82. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and

1 the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but are not
2 limited to, travel to DEFENDANT's other gym locations all on behalf of and for the benefit
3 of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not
4 reimburse PLAINTIFF and the CALIFORNIA LABOR SUBCLASS members for expenses
5 resulting from travel to and from other locations within the course and scope of their
6 employment for DEFENDANT. These expenses were necessary to complete their principal
7 job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of
8 this expectation. Although these expenses were necessary expenses incurred by the
9 PLAINTIFF and the CALIFORNIA LABOR SUBCLASS members, DEFENDANT failed
10 to indemnify and reimburse the PLAINTIFF and the CALIFORNIA LABOR SUBCLASS
11 members for these expenses as an employer is required to do under the laws and regulations
12 of California.

13 83. PLAINTIFF and the CALIFORNIA LABOR SUBCLASS members were
14 forced by the expectation of DEFENDANT to contribute to the DEFENDANT's business
15 expenses, which expenses must be refunded by DEFENDANT to each member of the
16 CALIFORNIA LABOR SUBCLASS.

17 84. PLAINTIFF therefore demands reimbursement for expenditures or losses
18 incurred by her and the CALIFORNIA LABOR SUBCLASS members in the discharge of
19 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
20 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

21
22 **FIFTH CAUSE OF ACTION**

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

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

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

27 85. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
28 CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1

1 through 84 of this Complaint.

2 86. Cal. Lab. Code § 200 provides that:

3 As used in this article:

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

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

7 87. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer
8 discharges an employee, the wages earned and unpaid at the time of discharge are due and
9 payable immediately."

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

11 If an employee not having a written contract for a definite period quits his or
12 her employment, his or her wages shall become due and payable not later than
72 hours thereafter, unless the employee has given 72 hours previous notice of
13 his or her intention to quit, in which case the employee is entitled to his or her
wages at the time of quitting. Notwithstanding any other provision of law, an
14 employee who quits without providing a 72-hour notice shall be entitled to
receive payment by mail if he or she so requests and designates a mailing
15 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
16 of quitting.

17 89. There was no definite term in Plaintiff Keokham's or any CALIFORNIA
18 LABOR SUB-CLASS Members' employment contract.

19 90. Cal. Lab. Code § 203 provides:

20 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
21 employee who is discharged or who quits, the wages of the employee shall
continue as a penalty from the due date thereof at the same rate until paid or
22 until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

23 91. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
24 CLASS Members has terminated and DEFENDANT has not tendered payment of overtime
25 wages, to these employees who actually worked overtime, as required by law.

26 92. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
27 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
28

1 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at
2 time of termination for all employees who terminated employment during the
3 CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment
4 of all wages due, plus interest and statutory costs as allowed by law.

5
6 **SIXTH CAUSE OF ACTION**

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

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

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

10 93. PLAINTIFF incorporates by reference the allegations set forth in paragraphs
11 1-92, supra, as though fully set forth at this point.

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

22 95. PLAINTIFF brings this Representative Action on behalf of the State of
23 California with respect to himself and all individuals who are or previously were employed
24 by DEFENDANT in California and classified as non-exempt employees during the time
25 period of April 8, 2015 until the present (the "AGGRIEVED EMPLOYEES").

26 96. On April 25, 2016, PLAINTIFF gave written notice by certified mail to the
27 Labor and Workforce Development Agency (the "Agency") and the employer of the
28 specific provisions of this code alleged to have been violated as required by Labor Code §

1 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
2 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has
3 expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
4 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
5 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

6 97. The policies, acts and practices heretofore described were and are an unlawful
7 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
8 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
9 overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized wage
10 statements, and (c) failed to timely pay wages, all in violation of the applicable Labor Code
11 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202,
12 203, 204, 226(a), 226.7, 256, 510, 512, 1194, 1198, 2802 and the applicable Industrial
13 Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
14 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
15 Private Attorney General Act of 2004 as the representative of the State of California for the
16 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF pray for judgment against each Defendant, jointly and
20 severally, as follows:

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

1 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
2 fund for restitution of the sums incidental to DEFENDANT's violations due to
3 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

5 A) That the Court certify the Second, Third, and Fourth Causes of Action asserted
6 by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal.
7 Code of Civ. Proc. § 382;

8 B) Compensatory damages, according to proof at trial, including compensatory
9 damages for overtime compensation due PLAINTIFF and the other members
10 of the CALIFORNIA LABOR SUB-CLASS, during the applicable
11 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
12 statutory rate;

13 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
14 period in which a violation occurs and one hundred dollars (\$100) per each
15 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
16 subsequent pay period, not exceeding an aggregate penalty of four thousand
17 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

18 D) The amount of the expenses PLAINTIFF and each member of the
19 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
20 plus interest, and costs of suit; and

21 E) The wages of all terminated employees from the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
23 or until an action therefore is commenced, in accordance with Cal. Lab. Code
24 § 203.

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

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

1 4. On all claims:

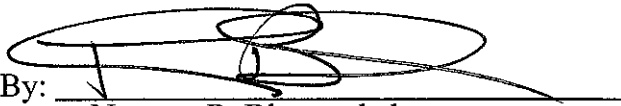
2 A) An award of interest, including prejudgment interest at the legal rate;

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

4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
5 including, but not limited to, pursuant to Labor Code §218.5, §226, §1194 and/or §
6 2802.

7
8 Dated: June 2, 2016

BLUMENTHAL, NORDREHAUG & BHOWMIK

9
10 By: 

11 Norman B. Blumenthal
12 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: June 2, 2016

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: _____



Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT #1

FACSIMILE
(858) 551-1232

BLUMENTHAL, NORDREHAUG & BHOWMIK

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037
Web Site: www.bamlawca.com

TELEPHONE
(858) 551-1223

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

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