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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

JENNIFER MONTOYA and JUAN GONTEZ, individually,
on behalf of themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

FPR II, L.L.C., dba LEADPOINT BUSINESS SERVICES,
a Limited Liability Company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **22CV404499**

**FIRST AMENDED CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1 AND THE APPLICABLE IWC WAGE ORDER;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510, 1194, 1199 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226 AND THE APPLICABLE WAGE ORDER;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202, 203 AND 204 AND THE APPLICABLE IWC WAGE ORDER;
9. FAILURE TO PAY SICK WAGES IN VIOLATION OF CAL. LAB CODE §§201-204, 233, 246;
10. WAITING TIME PENALTIES IN VIOLATION OF CAL. LAB. CODE §§201, 202, 203 AND THE APPLICABLE IWC WAGE ORDER;
11. FAILURE TO TIMELY PAY WAGES IN VIOLATION OF CAL. LAB. CODE § 204 AND THE APPLICABLE IWC WAGE ORDER; AND
12. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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1 Plaintiffs Jennifer Montoya and Juan Gontez (“PLAINTIFFS”), individually, on behalf of
2 themselves and all other similarly situated current and former employees alleges on information and
3 belief, except for his own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant FPR, II, L.L.C. dba Leadpoint Business Services is a limited liability company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
8 the state of California and is referred to herein as “DEFENDANT”.

9 2. DEFENDANT is an operating partner to companies in the waste and recycling industry.

10 3. Plaintiff MONTROYA was employed by DEFENDANT in California from April of 2020
11 to June of 2022 and was at all times classified by DEFENDANT as a non-exempt employee entitled to
12 the legally required meal and rest periods and payment of minimum and overtime wages due for all time
13 worked.

14 4. Plaintiff GONTEZ was employed by DEFENDANT in California from approximately
15 February of 2021 through approximately December 15, 2021 and was at all times classified by
16 DEFENDANT as a non-exempt employee entitled to the legally required meal and rest periods and
17 payment of minimum and overtime wages due for all time worked.

18 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
19 defined as all persons currently or formerly employed by DEFENDANT as non-exempt, hourly-paid
20 employees in the State of California (the “CALIFORNIA CLASS”) during the Class Period, defined
21 as October 13, 2018 through January 25, 2024 (the “CALIFORNIA CLASS PERIOD”). The amount
22 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
23 (\$5,000,000.00).

24 6. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
26 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to
27 lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was an
28 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to

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

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

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

21 22 **THE CONDUCT**

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

1 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted
2 by work assignments while clocked out for what should be PLAINTIFFS' off-duty meal break.
3 PLAINTIFFS and CALIFORNIA CLASS Members also worked off the clock with respect to time spent
4 undergoing mandatory drug testing or any other testing and/or examination required as a condition of
5 employment. DEFENDANT, as a matter of established company policy and procedure, administers a
6 uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and CALIFORNIA
7 CLASS Members, always to the benefit of DEFENDANT, so that during the course of their
8 employment, PLAINTIFFS and CALIFORNIA CLASS Members are paid less than they would have
9 been paid had they been paid for actual recorded time rather than "rounded" time. As a result,
10 PLAINTIFFS and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage
11 compensation, and off-duty meal breaks by working without their time being correctly recorded and
12 without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
13 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by
14 DEFENDANT's business records.

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

19 11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS Members'
20 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS and
21 other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT.
22 The non-discretionary incentive program provided all employees paid on an hourly basis with incentive
23 compensation when the employees met the various performance goals set by DEFENDANT. However,
24 when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to
25 PLAINTIFFS and other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
26 compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay
27 and meal and rest break premium pay. Management and supervisors described the incentive program
28 to potential and new employees as part of the compensation package. As a matter of law, the incentive

1 compensation received by PLAINTIFFS and other CALIFORNIA CLASS Members must be included
2 in the “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime
3 compensation and meal and rest break premiums to PLAINTIFFS and other CALIFORNIA CLASS
4 Members by DEFENDANT.

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

16 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA
17 CLASS Members were also required from time to time to work in excess of four (4) hours without
18 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
19 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time
20 to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
21 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
22 minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other
23 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
24 Additionally, the applicable California Wage Order requires employers to provide employees with off-
25 duty rest periods, which the California Supreme Court defined as time during which an employee is
26 relieved from all work related duties and free from employer control. In so doing, the Court held that
27 the requirement under California law that employers authorize and permit all employees to take rest
28 period means that employers must relieve employees of all duties and relinquish control over how

1 employees spend their time which includes control over the locations where employees may take their
2 rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five
3 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and other
4 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's
5 rule which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the work
6 premises during their rest period.

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

21 15. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
22 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
23 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
24 every employer shall furnish each of his or her employees with an accurate itemized wage statement in
25 writing 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. Defendant also
27 violated Cal. Lab. Code Section 226(a)(9) by failing to list the hours worked and hourly rates for the
28 "Miscellaneous" wage payments. Further, DEFENDANT violated Cal. Lab. Code Section 226(a)(8)

1 by failing to list the correct name of the legal entity that employed PLAINTIFFS and other
2 CALIFORNIA CLASS Members. Aside, from the violations listed above in this paragraph,
3 DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements
4 under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
5 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements which
6 violated Cal. Lab. Code § 226.

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

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

17 17. DEFENDANT, in the one (1) year before the filing of the Complaint in this Action
18 through the present, employed policies and practices that resulted in, at times, not paying PLAINTIFFS
19 and Class Members in accordance with Labor Code section 204.

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

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

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

21. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at

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

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

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

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

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

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

JURISDICTION AND VENUE

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

28. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or

1 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
2 in this County against members of the CALIFORNIA CLASS.

3
4 **THE CALIFORNIA CLASS**

5 29. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
6 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
7 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all persons
8 currently or formerly employed by DEFENDANT as non-exempt, hourly-paid employees in the State
9 of California (the "CALIFORNIA CLASS") during the Class Period, defined as October 13, 2018
10 through January 25, 2024 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
11 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

14 31. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
15 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and
16 the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice
17 whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFFS and other
18 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work,
19 required employees to perform this work and permits or suffers to permit this work.

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

28 33. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS

1 Members is impracticable.

2 34. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law
3 by:

- 4 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
5 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
6 in place company policies, practices and procedures that failed to record and pay
7 PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time
8 worked, including minimum wages owed and overtime wages owed for work
9 performed by these employees; and,
- 10 (b) Committing an act of unfair competition in violation of the UCL, by failing to
11 provide the PLAINTIFFS and the other members of the CALIFORNIA CLASS
12 with the legally required meal and rest periods.

13 35. 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 that the
16 joinder of all such persons is impracticable and the disposition of their claims
17 as a class will benefit the parties and the Court;
- 18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
19 are raised in this Complaint are common to the CALIFORNIA CLASS will
20 apply to every member of the CALIFORNIA CLASS;
- 21 (c) The claims of the representative PLAINTIFFS are typical of the claims of each
22 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other
23 members of the CALIFORNIA CLASS, were classified as a non-exempt
24 employees paid on an hourly basis who was subjected to the DEFENDANT's
25 deceptive practice and policy which failed to provide the legally required meal
26 and rest periods to the CALIFORNIA CLASS and thereby underpaid
27 compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS
28 sustained economic injury as a result of DEFENDANT's employment practices.

1 PLAINTIFFS and the members of the CALIFORNIA CLASS were and are
2 similarly or identically harmed by the same unlawful, deceptive and unfair
3 misconduct engaged in by DEFENDANT; and,

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

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

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

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

- 24 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on
25 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
26 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
27 DEFENDANT failed to pay all wages due to members of the CALIFORNIA
28 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 necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be

dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;

(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 CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA 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 CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

(d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able

1 to obtain effective and economic legal redress unless the action is maintained as
2 a Class Action;

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

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

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

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

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

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

25
26 **THE CALIFORNIA LABOR SUB-CLASS**

27 39. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
28 Ninth causes Action on behalf of a California sub-class, defined as all persons currently or formerly

1 employed by DEFENDANT as non-exempt, hourly-paid employees in the State of California (the
2 "CALIFORNIA LABOR SUB-CLASS") during the Class Period, defined as October 13, 2018 through
3 January 25, 2024 (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ.
4 Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
5 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

California regulations and the applicable California Wage Order;

- (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (e) Whether DEFENDANT's conduct was willful.

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

- (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an

1 employee is discharged or quits from employment, the employer must pay the
2 employee all wages due without abatement, by failing to tender full payment
3 and/or restitution of wages owed or in the manner required by California law to
4 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
5 their employment; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
27 asserting their legal rights out of fear of retaliation by DEFENDANT,
28 which may adversely affect an individual's job with DEFENDANT or

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

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

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

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

LABOR SUB-CLASS;

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

1 follows:

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

6 Cal. Bus. & Prof. Code § 17203.

7 51. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in
8 a business practice which violates California law, including but not limited to, the applicable Industrial
9 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
10 201, 202, 203, 204, 210, 221, 226, 226.7, 246, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2802,
11 2810.3, California Code of Regulations Title 8, section 11040 and the Fair Labor Standards Act and
12 federal regulations promulgated thereunder, for which this Court should issue declaratory and other
13 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy
14 the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

20 53. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
21 in that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest periods,
22 the required amount of compensation for missed meal and rest periods and overtime and minimum
23 wages owed, failed to timely pay wages, and failed to reimburse all necessary business expenses
24 incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime worked as
25 a result of failing to include non-discretionary incentive compensation into their regular rates of pay for
26 purposes of computing the proper overtime pay due to a business practice that cannot be justified,
27 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation
28 of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable

1 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

28 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and

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

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

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

16 17 **SECOND CAUSE OF ACTION**

18 **For Failure To Pay Minimum Wages**

19 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1 and the Applicable IWC Wage Order]**

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

21 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

25 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
26 permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members to work
27 without paying them for all the time they were under DEFENDANT's control. During the
28 CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other members of the

1 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to,
2 constituting a failure to pay all earned wages.

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

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

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

22 76. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
24 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
25 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined
26 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
27 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
28 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties

1 are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
2 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and
3 other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

4 77. Pursuant to Labor Code section 218.6, 1194, 1194.2, Code of Civil Procedure section
5 1021.5 and 1032, and Civil Code section 3287, PLAINTIFFS and the other members of the
6 CALIFORNIA LABOR SUB-CLASS are entitled to recover the full amount of unpaid minimum
7 wages, interest and penalties thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

8 **THIRD CAUSE OF ACTION**

9 **For Failure To Pay Overtime Compensation**

10 **[Cal. Lab. Code § 510, 1194 and 1199 and the Applicable IWC Wage Order]**

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

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

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

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

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

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

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

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

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

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

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

27 88. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that

1 they are entitled to, constituting a failure to pay all earned wages..

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

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

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

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

27 93. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
28 therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well

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

10 94. As a result of the unlawful acts of DEFENDANT, PLAINTIFFS and other members of
11 the CALIFORNIA LABOR SUB-CLASS have been deprived of overtime wages in amounts to be
12 determined at trial, and are entitled to recovery, plus interest and penalties thereon, attorneys' fees and
13 costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and
14 1032, and Civil Code section 3287.

15 **FOURTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code §§ 226.7 & 512 and the Applicable iWC Wage Order]**

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

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

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

1 SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their
2 meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA
3 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work
4 is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed
5 to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period in
6 some workdays in which these employees were required by DEFENDANT to work ten (10) hours of
7 work from time to time. As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR
8 SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with
9 DEFENDANT's strict corporate policy and practice.

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

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

18 19 **FIFTH CAUSE OF ACTION**

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

21 **[Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order]**

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

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

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

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

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

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

16 **SIXTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 226 and the Applicable Wage Order]**

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

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

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

- 25 (1) gross wages earned,
26 (2) total hours worked by the employee, except for any employee whose compensation is solely
27 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
28 515 or any applicable order of the Industrial Welfare Commission,
(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders of the employee may be

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

10 105. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
11 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
12 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
13 226 provides that every employer shall furnish each of his or her employees with an accurate itemized
14 wage statement in writing showing, among other things, gross wages earned and all applicable hourly
15 rates in effect during the pay period and the corresponding amount of time worked at each hourly rate.
16 Defendant also violated Cal. Lab. Code Section 226(a)(9) by failing to list the hours worked and hourly
17 rates for the “Miscellaneous” wage payments. Further, DEFENDANT violated Cal. Lab. Code Section
18 226(a)(8) by failing to list the correct name of the legal entity that employed PLAINTIFFS and other
19 CALIFORNIA LABOR-SUB-CLASS Members. Aside, from the violations listed above in this
20 paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
21 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time
22 provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with wage
23 statements which violated Cal. Lab. Code § 226.

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

1 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA
2 LABOR SUB-CLASS herein).

3
4 **SEVENTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 2802]**

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

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

10
11 108. Cal. Lab. Code § 2802 provides, in relevant part, that:

12 An employer shall indemnify his or her employee for all necessary expenditures or
13 losses incurred by the employee in direct consequence of the discharge of his or her
14 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.

15 109. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing
16 to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
17 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
18 DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
19 members for expenses which included, but were not limited to, costs related to using their personal
20 cellular phones on behalf of and for the benefit of DEFENDANT for purchasing and/or providing
21 unreturned deposits for mandatory work uniforms; laundering mandatory work uniforms; mileage
22 and/or gas costs incurred in driving personal vehicles for work-related purposes; using and purchasing
23 tools necessary to perform work duties.

24 110. Specifically, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members
25 were required by DEFENDANT to use their personal cellular phones and personal home offices in
26 order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse
27 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using
28 their personal cellular phones for DEFENDANT within the course and scope of their employment for

1 DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT
2 is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these
3 expenses were necessary expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-
4 CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the
5 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do
6 under the laws and regulations of California.

7 111. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred by
8 themselves and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties
9 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory
10 rate and costs under Cal. Lab. Code § 2802.

11 **EIGHTH CAUSE OF ACTION**

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

13 **[Cal. Lab. Code §§ 201, 202, 203 and 204 and the Applicable IWC Wage Order]**

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

15 **and Against All Defendants)**

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

19 113. Cal. Lab. Code § 200 provides, in relevant part, that:

20 As used in this article:

21 (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.

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

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

26 115. Cal. Lab. Code § 202 provides, in relevant part, that:

27 If an employee not having a written contract for a definite period quits his or her
28 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 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 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 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.

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

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

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

118. The Employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

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

NINTH CAUSE OF ACTION

For Failure to Pay Sick Pay Wages

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

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

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

121. Cal Lab. Code § 233 provides that an employer must permit an employee to use accrued

1 sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of entitlement.
2 Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick
3 leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as paid sick
4 time, an employee has a vested right to sick pay wages, which an employer must calculate and
5 compensate based on one of two calculations: (i) "Paid sick time for nonexempt employees shall be
6 calculated in the same manner as the regular rate of pay for the workweek in which the employee uses
7 paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid
8 sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not
9 including overtime premium pay, by the employee's total hours worked in the full pay periods of the
10 prior 90 days of employment." Under Cal Lab. Code §§ 218 and 233, employees may sue to recover
11 underpaid sick pay wages as damages.

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

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

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

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

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

26 ///

27 ///

28 ///

1 **TENTH CAUSE OF ACTION**

2 **For Waiting Time Penalties**

3 **[Cal. Lab. Code §§ 201, 202, 203 and the Applicable Wage Order]**

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

5 126. Plaintiff realleges and incorporates by reference all of the allegations contained in the
6 preceding paragraphs as though fully set forth hereat.

7 127. At all relevant times, Plaintiff and Class Members were employees or former employees
8 of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

9 128. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled
10 upon termination to timely payment of all wages earned and un[paid prior to termination Discharged
11 Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately
12 upon termination. Class Members who resigned were entitled to payment of all wages earned and
13 unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours
14 previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

15 129. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years
16 before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at
17 times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class Members all wages
18 earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

19 130. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class
20 Members all wages earned prior to termination or resignation in accordance with Labor Code sections
21 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class
22 Members at the time of termination in accordance with Labor Code sections 201 and 202, but
23 intentionally adopted policies or practices incompatible with the requirements of Labor Code sections
24 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or resignation.

25 131. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to waiting
26 time penalties from the date their earned and unpaid wages were due, upon termination or resignation,
27 until paid, up to a maximum of thirty (30) days.

28 132. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered

1 damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to
2 termination or resignation.

3 133. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections 1021.5
4 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover waiting
5 time penalties, interest, and their costs of suit, as well.

6
7 **ELEVENTH CAUSE OF ACTION**

8 **(Failure to Pay Wages During Employment)**

9 **[Cal. Lab. Code § 204 and the Applicable IWC Wage Order]**

10 **(By PLAINTIFFS and Against All Defendants)**

11 134. PLAINTIFFS reallege each and every allegation set forth in the preceeding paragraphs
12 and incorporate each by reference as through fully set forth hereat.

13 135. At all times, PLAINTIFFS and Class Members were employees or former employees
14 of Defendants covered by Labor Code section 204 and applicable Wage Orders.

15 136. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th days,
16 inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during
17 which the labor was performed, and labor performed between the 16th and the last day, inclusive, of
18 any calendar month, shall be paid for between the 1st and 10th day of the following month.”

19 137. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
20 independent and apart from, any other penalty provided in this article, every person who fails to pay the
21 wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
22 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
23 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
24 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
25 percent of the amount unlawfully withheld.”

26 138. PLAINTIFFS are informed and believe, and based thereon alleges, that in the one (1)
27 year before the filing of the Complaint in this Action through the present, Defendants employed policies
28 and practices that resulted in, at times, not paying PLAINTIFFS and Class Members in accordance with

1 Labor Code section 204.

2 139. Pursuant to Labor Code section 210, PLAINTIFFS and Class Members are entitled to
3 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred
4 dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200) for each
5 subsequent violation in connection with each payment that was made in violation of Labor Code section
6 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

7 140. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
8 1032, and Civil Code section 3287, PLAINTIFFS and Class Members are entitled to recovery of
9 penalties, interest, and their costs of suit, as well.

10
11 **TWELFTH CAUSE OF ACTION**

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

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

14 **(By PLAINTIFFS and Against All Defendants)**

15 141. PLAINTIFFS reallege and incorporates by reference, as though fully set forth herein,
16 the prior paragraphs of this Complaint.

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

26 143. PLAINTIFFS, and such persons that may be added from time to time who satisfy the
27 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
28 this Representative Action on behalf of the State of California with respect to themselves and all

1 persons currently or formerly employed by DEFENDANT, as non-exempt, hourly-paid employees
2 (“AGGRIEVED EMPLOYEES”) during the time period of July 12, 2021 through January 25, 2024(the
3 "PAGA PERIOD").

4 144. On July 13, 2022, Plaintiff MONTROYA gave written notice by electronic mail to the
5 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of
6 the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
7 On October 18, 2022 and December 19, 2023, Plaintiff GONTEZ gave written notices by electronic
8 mail to the Agency and by certified mail to the employer of the specific provisions of this code alleged
9 to have been violated as required by Labor Code § 2699.3. The statutory waiting period for
10 PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to Section
11 2699.3, PLAINTIFFS may now commence a representative civil action under PAGA pursuant to
12 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES
13 as herein defined.

14 145. The policies, acts and practices heretofore described were and are an unlawful business
15 act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the AGGRIEVED
16 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
17 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
18 sick pay wages, (e) failed to reimburse employees for required expenses and (f) failed to provide wages
19 when due, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203,
20 204 *et seq.*, 210, 221, 226, 226(a), 226.3, 226.7, 227.3, 246 *et. seq.*, 432, 510, 512, 558, 558(a)(1)(2),
21 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 2699, 2802, 2810.5, California Code of Regulations,
22 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise
23 to civil penalties as a result of such conduct. PLAINTIFFS hereby seek recovery of only civil penalties
24 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State
25 of California for the illegal conduct perpetrated on PLAINTIFFS and the AGGRIEVED EMPLOYEES.

26 146. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
27 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFFS during
28 the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that affected other AGGRIEVED

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

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFFS prays for judgment against each Defendant, jointly and severally,
6 as follows:

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth
20 and Tenth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
21 class action pursuant to Cal. Code of Civ. Proc. § 382;
- 22 B) Compensatory damages, according to proof at trial, including compensatory damages
23 for minimum and overtime compensation due PLAINTIFFS and the other members of
24 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR
25 SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 26 C) Damages for all wages earned and owed, including minimum. overtime wages under
27 Labor Code sections 510, 558.1, 1194, 1197 and 1199 and;
- 28 D) Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;

- 1 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
2 a violation occurs and one hundred dollars (\$100) per each member of the
3 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not
4 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs
5 for violation of Cal. Lab. Code § 226;
- 6 F) Meal and rest period compensation, which includes unpaid premium wages from missed
7 meal and rest periods, pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC
8 Wage Order;
- 9 G) For liquidated damages pursuant to Cal. Lab. Code §§558.1, 1194.2 and 1197;
- 10 H) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
11 LABOR SUBCLASS incurred in the course of their job duties pursuant to Cal. Lab.
12 Code §§ 2802 and 558.1, plus interest, and costs of suit.;
- 13 I) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as
14 a penalty from the due date thereof at the same rate until paid or until an action therefore
15 is commenced, in accordance with Cal. Lab. Code § 203.

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

- 17 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
18 Act of 2004; and,

19 4. On all claims:

- 20 A) An award of interest, including prejudgment interest at the legal rate;
21 B) Such other and further relief as the Court deems just and equitable; and,
22 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
23 including, but not limited to, pursuant to Labor Code §210, §221, §226, §226.3, §558,
24 §1174.5, §1197.1 §1194, §2802 and/or §2699.

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Dated: June 26, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
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