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1/19/2024 4:33 PM
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NAPA

IGNACIO MORENO, an individual, on
behalf of himself and on behalf of all
persons similarly situated, and on behalf
of the State of California, as a private
attorney general,

Plaintiff,

vs.

DOMAINE CHANDON, INC., a
Corporation; NEWTON VINEYARD
LLC; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 22CV001128
[Consolidated with 22CV001500]

**FIRST AMENDED CONSOLIDATED 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;
3. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS
IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512
AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS
IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512
AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED
STATEMENTS IN VIOLATION OF CAL. LAB. CODE §
226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR
REQUIRED EXPENSES IN VIOLATION OF CAL. LAB.
CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN
VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION
OF CAL. LAB CODE §§201-204, 233, 246; and
10. VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff Ignacio Moreno ("PLAINTIFF"), an individual, on behalf of himself and all
2 other similarly situated current and former employees alleges on information and belief, except
3 for his own acts and knowledge which are based on personal knowledge, the following:
4

5 THE PARTIES

6 1. Defendant Domaine Chandon, Inc. is a corporation that at all relevant times
7 mentioned herein conducted and continues to conduct substantial business in the state of
8 California.

9 2. Defendant Newton Vineyard LLC is a limited liability company that at all relevant
10 times mentioned herein conducted and continues to conduct substantial business in the state of
11 California.

12 3. PLAINTIFF alleges there has existed a unity of interest and ownership between
13 these Defendants such that any individuality and separateness between the entities has ceased.
14 Defendants Domaine Chandon, Inc. and Newton Vineyard LLC are therefore alter egos of each
15 other. Adherence to the fiction of the separate existence of would permit an abuse of the
16 corporative privilege, and would promote injustice by protecting Domaine Chandon, Inc. and
17 Newton Vineyard LLC from liability for the wrongful acts committed by them. As evidenced
18 by PLAINTIFF's paychecks and company documents, Defendants Domaine Chandon, Inc. and
19 Newton Vineyard LLC were joint employers of PLAINTIFF and are referred to herein as
20 ("DEFENDANT").

21 4. DEFENDANT is a winery located in Napa Valley in the town of Yountville,
22 California, United States. Established in 1973 by Moët et Chandon, businessman, John Wright,
23 was the first French-owned sparkling wine producer in Napa Valley.

24 5. PLAINTIFF was employed by DEFENDANT in California from 1980 to
25 December of 2021 and was at all times classified by DEFENDANT as a non-exempt
26 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
27 payment of minimum and overtime wages due for all time worked.
28

1 6. PLAINTIFF brings this Class Action on behalf of himself and a California class,
2 defined as all individuals who are or previously were employed by either Domaine Chandon,
3 Inc. and/or Newton Vineyard LLC in the State of California as a non-exempt hourly employee
4 (the "CALIFORNIA CLASS") at any time during the period beginning September 27, 2018 to
5 the earlier of preliminary approval or November 3, 2023 (the "CALIFORNIA CLASS
6 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
7 Members is under five million dollars (\$5,000,000.00).

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

19 8. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
21 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
22 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
23 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
24 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
25 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
26 50, inclusive, are responsible in some manner for one or more of the events and happenings
27 that proximately caused the injuries and damages hereinafter alleged.
28

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

THE CONDUCT

10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. PLAINTIFF and CALIFORNIA CLASS Members also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and CALIFORNIA CLASS

1 Members to perform work off the clocking that DEFENDANT, as a condition of
2 employment, required these employees to submit to mandatory temperature checks and
3 symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
4 timekeeping system for the workday. As a result, PLAINTIFF and other CALIFORNIA
5 CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal
6 breaks by working without their time being correctly recorded and without compensation at
7 the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
8 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
9 business records.

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

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

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

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

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

7 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
8 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
9 actual amount of time these employees worked. Pursuant to the Industrial Welfare
10 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
11 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
12 employee was subject to the control of an employer, including all the time the employee was
13 permitted or suffered to permit this work. DEFENDANT required these employees to work
14 off the clock without paying them for all the time they were under DEFENDANT's control.
15 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
16 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
17 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
18 working without their time being accurately recorded and without compensation at the
19 applicable minimum wage and overtime wage rates. To the extent that the time worked off
20 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
21 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
22 1197, and 1197.1.

23 16. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
24 other members of the CALIFORNIA CLASS with complete and accurate wage statements
25 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
26 Code § 226 provides that every employer shall furnish each of his or her employees with an
27 accurate itemized wage statement in writing showing, among other things, gross wages
28 earned and all applicable hourly rates in effect during the pay period and the corresponding

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

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

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

24 18. DEFENDANT from time to time failed to pay PLAINTIFF and members of
25 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
26 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
27 the "Hourly" regular wage payments.
28

1 19. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
2 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
3 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
4 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
5 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
6 Members at their base rates of pay.

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

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

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

24 23. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
25 to collect or receive from an employee any part of wages theretofore paid by said employer
26 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
27 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
28 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,

1 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF
2 and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these
3 employees all wages due at each applicable pay period and upon termination. PLAINTIFF
4 and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
5 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

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

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

27 26. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
28 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage

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

10 **JURISDICTION AND VENUE**

11 27. This Court has jurisdiction over this Action pursuant to California Code of
12 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
13 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
14 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

21 **THE CALIFORNIA CLASS**

22
23 29. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
24 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
25 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
26 California class, defined as all individuals who are or previously were employed by either
27 Domaine Chandon, Inc. and/or Newton Vineyard LLC in the State of California as a non-
28

1 exempt hourly employee (the "CALIFORNIA CLASS") at any time during the period
2 beginning September 27, 2018 to the earlier of preliminary approval or November 3, 2023
3 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
4 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

24 33. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
25 CLASS Members is impracticable.

26 34. DEFENDANT violated the rights of the CALIFORNIA CLASS under
27 California law by:
28

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

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

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

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

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

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

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

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

- 27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
28 to act on grounds generally applicable to the CALIFORNIA CLASS,

1 making appropriate class-wide relief with respect to the CALIFORNIA
2 CLASS as a whole in that DEFENDANT failed to pay all wages due to
3 members of the CALIFORNIA CLASS as required by law;

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

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

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

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

27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA CLASS, which

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

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

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

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

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

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

27 (b) A Class Action is superior to any other available method for the fair
28 and efficient adjudication of the claims of the members of the

1 CALIFORNIA CLASS because in the context of employment litigation
2 a substantial number of individual CALIFORNIA CLASS Members
3 will avoid asserting their rights individually out of fear of retaliation or
4 adverse impact on their employment;

- 5 (c) The members of the CALIFORNIA CLASS are so numerous that it is
6 impractical to bring all members of the CALIFORNIA CLASS before
7 the Court;
- 8 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
9 be able to obtain effective and economic legal redress unless the action
10 is maintained as a Class Action;
- 11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the acts of unfair competition, statutory violations
13 and other improprieties, and in obtaining adequate compensation for
14 the damages and injuries which DEFENDANT's actions have inflicted
15 upon the CALIFORNIA CLASS;
- 16 (f) There is a community of interest in ensuring that the combined assets of
17 DEFENDANT are sufficient to adequately compensate the members of
18 the CALIFORNIA CLASS for the injuries sustained;
- 19 (g) DEFENDANT has acted or refused to act on grounds generally
20 applicable to the CALIFORNIA CLASS, thereby making final class-
21 wide relief appropriate with respect to the CALIFORNIA CLASS as a
22 whole;
- 23 (h) The members of the CALIFORNIA CLASS are readily ascertainable
24 from the business records of DEFENDANT; and,
- 25 (i) Class treatment provides manageable judicial treatment calculated to
26 bring a efficient and rapid conclusion to all litigation of all wage and
27 hour related claims arising out of the conduct of DEFENDANT as to
28 the members of the CALIFORNIA CLASS.

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

6
7 **THE CALIFORNIA LABOR SUB-CLASS**

8 39. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
9 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all
10 individuals who are or previously were employed by either Domaine Chandon, Inc. and/or
11 Newton Vineyard LLC in the State of California as a non-exempt hourly employee (the
12 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning
13 September 27, 2018 to the earlier of preliminary approval or November 3, 2023
14 ("CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. §
15 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
16 CLASS Members is under five million dollars (\$5,000,000.00).

17 40. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
18 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
19 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
20 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
22 these employees, even though DEFENDANT enjoyed the benefit of this work, required
23 employees to perform this work and permitted or suffered to permit this work.
24 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
25 which these employees are entitled in order to unfairly cheat the competition and unlawfully
26 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
27 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
28 should be adjusted accordingly.

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

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

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

- 10 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
11 compensation due to members of the CALIFORNIA LABOR SUB-
12 CLASS for missed meal and rest breaks in violation of the California
13 Labor Code and California regulations and the applicable California
14 Wage Order;
15 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS with accurate
17 itemized wage statements;
18 (c) Whether DEFENDANT has engaged in unfair competition by the
19 above-listed conduct;
20 (d) The proper measure of damages and penalties owed to the members of
21 the CALIFORNIA LABOR SUB-CLASS; and,
22 (e) Whether DEFENDANT's conduct was willful.

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

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

- 1 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
2 accurately pay PLAINTIFF and the members of the CALIFORNIA
3 LABOR SUB-CLASS the correct minimum wage pay for which
4 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 5 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
6 the members of the CALIFORNIA LABOR SUB-CLASS with an
7 accurate itemized statement in writing showing the corresponding
8 correct amount of wages earned by the employee;
- 9 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFF and the other members of the CALIFORNIA LABOR
11 SUB-CLASS with all legally required off-duty, uninterrupted thirty
12 (30) minute meal breaks and the legally required off-duty rest breaks;
- 13 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
14 when an employee is discharged or quits from employment, the
15 employer must pay the employee all wages due without abatement, by
16 failing to tender full payment and/or restitution of wages owed or in the
17 manner required by California law to the members of the
18 CALIFORNIA LABOR SUB-CLASS who have terminated their
19 employment; and,
- 20 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
21 and the CALIFORNIA LABOR SUB-CLASS members with necessary
22 expenses incurred in the discharge of their job duties.

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

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

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

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

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

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

- 3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which
5 would establish incompatible standards of conduct for the
6 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
7 2) Adjudication with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS which would as a
9 practical matter be dispositive of interests of the other members
10 not party to the adjudication or substantially impair or impede
11 their ability to protect their interests.

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

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

- 26 1) The interests of the members of the CALIFORNIA LABOR
27 SUB-CLASS in individually controlling the prosecution or
28 defense of separate actions in that the substantial expense of

1 individual actions will be avoided to recover the relatively small
2 amount of economic losses sustained by the individual
3 CALIFORNIA LABOR SUB-CLASS Members when compared
4 to the substantial expense and burden of individual prosecution
5 of this litigation;

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

8 A. Inconsistent or varying adjudications with respect to
9 individual members of the CALIFORNIA LABOR SUB-
10 CLASS, which would establish incompatible standards of
11 conduct for the DEFENDANT; and/or,

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

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

24 4) A class action is superior to other available methods for the fair
25 and efficient adjudication of this litigation because class
26 treatment will obviate the need for unduly and unnecessary
27 duplicative litigation that is likely to result in the absence of
28

1 certification of this action pursuant to Cal. Code of Civ. Proc. §
2 382.

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

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

- 1 (g) DEFENDANT has acted or refused to act on grounds generally
2 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
3 making final class-wide relief appropriate with respect to the
4 CALIFORNIA LABOR SUB-CLASS as a whole;
- 5 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
6 ascertainable from the business records of DEFENDANT. The
7 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
8 CLASS Members who worked for DEFENDANT in California at any
9 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to
11 bring a efficient and rapid conclusion to all litigation of all wage and
12 hour related claims arising out of the conduct of DEFENDANT as to
13 the members of the CALIFORNIA LABOR SUB-CLASS.

14
15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

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

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

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

22 49. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
23 Code § 17021.

24 50. California Business & Professions Code §§ 17200, *et seq.* (the "UCL")
25 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.
26 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
27 unfair competition as follows:
28

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

9 Cal. Bus. & Prof. Code § 17203.

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

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

24 53. By the conduct alleged herein, DEFENDANT's practices were deceptive and
25 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
26 meal and rest periods, the required amount of compensation for missed meal and rest
27 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
28 reimburse all necessary business expenses incurred, and failed to provide Fair Labor
Standards Act overtime wages due for overtime worked as a result of failing to include non-
discretionary incentive compensation into their regular rates of pay for purposes of
computing the proper overtime pay due to a business practice that cannot be justified,

1 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
2 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
3 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
4 restitution of wages wrongfully withheld.

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

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

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

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

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

27 59. All the acts described herein as violations of, among other things, the
28 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the

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

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

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

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

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26 **SECOND CAUSE OF ACTION**

27 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

23 74. DEFENDANT knew or should have known that PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
25 time worked. DEFENDANT elected, either through intentional malfeasance or gross
26 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
27 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
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1 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
2 wages for their time worked.

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

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

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27 **THIRD CAUSE OF ACTION**

28 **For Failure To Pay Overtime Compensation**

1 [Cal. Lab. Code § 510]

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

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

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

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

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

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

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

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

9 84. In committing these violations of the California Labor Code, DEFENDANT
10 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
11 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
12 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
13 violation of the California Labor Code, the Industrial Welfare Commission requirements
14 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
15 wage practices as alleged herein, the PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
17 worked.

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

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

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

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

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

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

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

13
14 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26
27 **FIFTH CAUSE OF ACTION**

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

1 [Cal. Lab. Code §§ 226.7 & 512]

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

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

7 97. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
8 from time to time required to work in excess of four (4) hours without being provided ten
9 (10) minute rest periods. Further, these employees from time to time were denied their first
10 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
11 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
12 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
13 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

14 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
15 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
16 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
17 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

27 **SIXTH CAUSE OF ACTION**

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

[Cal. Lab. Code § 226]

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

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

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

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

102. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to

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

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

25
26 **SEVENTH CAUSE OF ACTION**

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

1 [Cal. Lab. Code § 2802]

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

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

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

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

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

1 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
2 these expenses as an employer is required to do under the laws and regulations of California.

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

7
8 **EIGHTH CAUSE OF ACTION**

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

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

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

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

16 109. Cal. Lab. Code § 200 provides, in relevant part, that:

17 As used in this article:

- 18 (a) "Wages" includes all amounts for labor performed by employees of
19 every description, whether the amount is fixed or ascertained by the
20 standard of time, task, piece, Commission basis, or other method of calculation.
21 (b) "Labor" includes labor, work, or service whether rendered or
22 performed under contract, subcontract, partnership, station plan, or other
23 agreement if the labor to be paid for is performed personally by the person
24 demanding payment.

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

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

If an employee not having a written contract for a definite period quits his
or her employment, his or her wages shall become due and payable not
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

1 constitute the date of payment for purposes of the requirement to provide
2 payment within 72 hours of the notice of quitting.

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

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

6 If an employer willfully fails to pay, without abatement or reduction, in
7 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
8 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 therefor is commenced; but the wages shall not continue
for more than 30 days.

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

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

19 **NINTH CAUSE OF ACTION**

20 **For Failure to Pay Sick Pay Wages**

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

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

23 **and Against All Defendants)**

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

27 117. Cal Lab. Code § 233 provides that an employer must permit an employee to
28

1 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
2 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
3 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
4 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
5 right to sick pay wages, which an employer must calculate and compensate based on one of
6 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
7 same manner as the regular rate of pay for the workweek in which the employee uses paid
8 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
9 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
10 total wages, not including overtime premium pay, by the employee's total hours worked in
11 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
12 233, employees may sue to recover underpaid sick pay wages as damages.

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

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

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

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

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

TENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

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

124. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by either Domaine Chandon, Inc. and/or Newton Vineyard LLC in California and classified as a non-exempt non-exempt employee ("AGGRIEVED EMPLOYEES") during the time period of July 11, 2021 until the earlier of preliminary approval or November 3, 2023 (the "PAGA PERIOD").

1 125. On July 11, 2022, PLAINTIFF gave written notice by electronic mail to the
2 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
3 employer of the specific provisions of this code alleged to have been violated as required by
4 Labor Code § 2699.3. On September 27, 2022, PLAINTIFF gave amended written notice
5 by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
6 certified mail to the employer of the specific provisions of this code alleged to have been
7 violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFF
8 to add these allegations to the Complaint has expired. As a result, pursuant to Section
9 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
10 pursuant to Section 2699 as the proxy of the State of California with respect to all
11 AGGRIEVED EMPLOYEES as herein defined.

12 126. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
15 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
16 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
17 required expenses and (f) failed to provide wages when due, all in violation of the applicable
18 Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 212, 218, 221,
19 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and the
20 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
21 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
22 Labor Code Private Attorney General Act of 2004 as the representative of the State of
23 California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
24 EMPLOYEES.

25
26
27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1
2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
4 severally, as follows:

5 1. On behalf of the CALIFORNIA CLASS:

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

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

- 17 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
18 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
19 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
20 B) Compensatory damages, according to proof at trial, including compensatory
21 damages for minimum and overtime compensation due PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
23 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
24 statutory rate;
25 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
26 in which a violation occurs and one hundred dollars (\$100) per each member of
27 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
28

- 1 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
2 an award of costs for violation of Cal. Lab. Code § 226;
- 3 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
4 the applicable IWC Wage Order;
- 5 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
6 1197;
- 7 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
8 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
9 costs of suit.; and,
- 10 G) The wages of all terminated employees in the CALIFORNIA LABOR
11 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
12 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 13 3. On behalf of the State of California and with respect to all AGGRIEVED
14 EMPLOYEES:
- 15 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
16 General Act of 2004.
- 17 4. On all claims:
- 18 A) An award of interest, including prejudgment interest at the legal rate;
19 B) Such other and further relief as the Court deems just and equitable; and,
20 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
21 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
22 and/or §2802.

23
24 Dated: January 19, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

25
26 By: /s/ Nicholas De Blouw
27 Norman B. Blumenthal
28 Kyle R. Nordrehaug
Nicholas J. De Blouw

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DEMAND FOR A JURY TRIAL

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

Dated: January 19, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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7
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF NAPA**

11
12 IGNACIO MORENO, an individual, on
behalf of himself and on behalf of all
13 persons similarly situated, and on
behalf of the State of California, as a
14 private attorney general,

15 Plaintiff,

16 vs.

17 DOMAINE CHANDON, INC., a
18 Corporation; NEWTON VINEYARD
LLC; and DOES 1 through 50,
19 inclusive,

20 Defendants.
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Case No. 22CV001128

[Consolidated with 22CV001500]

PROOF OF SERVICE

Action Filed: September 27, 2022

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Yesenia Silva, am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On January 19, 2024, I served the document(s) described as:

1. FIRST AMENDED CONSOLIDATED CLASS AND REPRESENTATIVE ACTION COMPLAINT

X **(BY ELECTRONIC SERVICE):** I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

Emilie Woodhead
Zarouhi Papazyan
WINSTON & STRAWN LLP
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D: +1 213-615-1823
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EWoodhead@winston.com
ZPapazyan@winston.com

CC: Gwen Montoya - GMontoya@winston.com

X **(State):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 19, 2024, at San Diego, California.



Yesenia Silva