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County of Los Angeles

11/09/2022

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**ABEL YOUNG, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

TABC, INC., a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 22STCV25696**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
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 Abel Young (“PLAINTIFF”), an individual, on behalf of himself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 his own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant TABC, Inc. (“DEFENDANT”) is a corporation that at all relevant
7 times mentioned herein conducted and continues to conduct substantial business in the state of
8 California.

9 2. DEFENDANT is a manufacturing plant in Long Beach, California, located at
10 6375 North Paramount Boulevard.

11 3. PLAINTIFF was employed by DEFENDANT in California from 1995 to
12 September of 2021 and again from March of 2022 to May 26, 2022 and was at all times
13 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled
14 to the legally required meal and rest periods and payment of minimum and overtime wages due
15 for all time worked.

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

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

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

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

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

24 **THE CONDUCT**

25
26 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
27 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
28 worked, meaning the time during which an employee is subject to the control of an

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

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

1 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
3 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
4 performance for DEFENDANT. The non-discretionary incentive program provided all
5 employees paid on an hourly basis with incentive compensation when the employees met the
6 various performance goals set by DEFENDANT. However, when calculating the regular
7 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
8 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
9 compensation as part of the employees' "regular rate of pay" for purposes of calculating
10 overtime pay and meal and rest break premium pay. Management and supervisors described
11 the incentive program to potential and new employees as part of the compensation package.
12 As a matter of law, the incentive compensation received by PLAINTIFF and other
13 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
14 to do so has resulted in a underpayment of overtime compensation and meal and rest break
15 premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

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

1 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
2 CALIFORNIA CLASS Members were also required from time to time to work in excess of
3 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
4 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
5 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
6 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
7 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
8 worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
9 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
10 the applicable California Wage Order requires employers to provide employees with off-
11 duty rest periods, which the California Supreme Court defined as time during which an
12 employee is relieved from all work related duties and free from employer control. In so
13 doing, the Court held that the requirement under California law that employers authorize and
14 permit all employees to take rest period means that employers must relieve employees of all
15 duties and relinquish control over how employees spend their time which includes control
16 over the locations where employees may take their rest period. Employers cannot impose
17 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
18 back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA
19 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
20 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
21 premises during their rest period.

22 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
23 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
24 actual amount of time these employees worked. Pursuant to the Industrial Welfare
25 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
26 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
27 employee was subject to the control of an employer, including all the time the employee was
28 permitted or suffered to permit this work. DEFENDANT required these employees to work

1 off the clock without paying them for all the time they were under DEFENDANT's control.
2 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
3 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
4 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
5 working without their time being accurately recorded and without compensation at the
6 applicable minimum wage and overtime wage rates. To the extent that the time worked off
7 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
8 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
9 1197, and 1197.1.

10 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
11 other members of the CALIFORNIA CLASS with complete and accurate wage statements
12 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
13 Code § 226 provides that every employer shall furnish each of his or her employees with an
14 accurate itemized wage statement in writing showing, among other things, gross wages
15 earned and all applicable hourly rates in effect during the pay period and the corresponding
16 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
17 Members were paid on an hourly basis. As such, the wage statements should reflect all
18 applicable hourly rates during the pay period and the total hours worked, and the applicable
19 pay period in which the wages were earned pursuant to California Labor Code Section
20 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
21 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
22 wage statements failed to identify the accurate total hours worked each pay period. When
23 the hours shown on the wage statements were added up, they did not equal the actual total
24 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
25 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
26 an itemized wage statement that lists all the requirements under California Labor Code 226
27 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
28

1 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
2 § 226.

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

7 in [I]n addition to, and entirely independent and apart from, any other penalty provided
8 this article, every person who fails to pay the wages of each employee as provided in
9 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
10 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.

11 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of
12 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
13 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
14 the “Hourly” regular wage payments.

15 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
16 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
17 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
18 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
19 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
20 Members at their base rates of pay.

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

25 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
26 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely
27 earned non-discretionary incentive wages which increased their regular rate of pay.
28 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and

1 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
2 as required under Cal. Lab. Code Section 246.

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

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

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

1 duties, or of his or her obedience to the directions of the employer, even though unlawful,
2 unless the employee, at the time of obeying the directions, believed them to be unlawful."

3 23. In the course of their employment PLAINTIFF and other CALIFORNIA
4 CLASS Members as a business expense, were required by DEFENDANT to use their own
5 personal cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
7 associated with the use of their personal cellular phones for DEFENDANT's benefit.
8 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
9 DEFENDANT to use their personal cellular phones. As a result, in the course of their
10 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
11 CLASS incurred unreimbursed business expenses which included, but were not limited to,
12 costs related to the use of their personal cellular phones all on behalf of and for the benefit
13 of DEFENDANT.

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

25 **JURISDICTION AND VENUE**

26 25. This Court has jurisdiction over this Action pursuant to California Code of
27 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
28

1 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
2 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

9
10 **THE CALIFORNIA CLASS**

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

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

24 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
26 Order requirements, and the applicable provisions of California law, intentionally,
27 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
28 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,

1 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
2 this work and permits or suffers to permit this work.

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

12 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
13 CLASS Members is impracticable.

14 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under
15 California law by:

- 16 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
17 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
18 and/or deceptively having in place company policies, practices and
19 procedures that failed to record and pay PLAINTIFF and the other
20 members of the CALIFORNIA CLASS for all time worked, including
21 minimum wages owed and overtime wages owed for work performed
22 by these employees; and,
- 23 (b) Committing an act of unfair competition in violation of the UCL, by
24 failing to provide the PLAINTIFF and the other members of the
25 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

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

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

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

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

21 1) With respect to the First Cause of Action, the final relief on
22 behalf of the CALIFORNIA CLASS sought does not relate
23 exclusively to restitution because through this claim
24 PLAINTIFF seeks declaratory relief holding that the
25 DEFENDANT's policy and practices constitute unfair
26 competition, along with declaratory relief, injunctive relief, and
27 incidental equitable relief as may be necessary to prevent and
28 remedy the conduct declared to constitute unfair competition;

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

- 7 1) The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate
9 actions in that the substantial expense of individual actions will
10 be avoided to recover the relatively small amount of economic
11 losses sustained by the individual CALIFORNIA CLASS
12 Members when compared to the substantial expense and burden
13 of individual prosecution of this litigation;
- 14 2) Class certification will obviate the need for unduly duplicative
15 litigation that would create the risk of:
- 16 A. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or,
- 20 B. Adjudications with respect to individual members of the
21 CALIFORNIA CLASS would as a practical matter be
22 dispositive of the interests of the other members not
23 parties to the adjudication or substantially impair or
24 impede their ability to protect their interests;
- 25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA CLASS Members will avoid asserting
27 their legal rights out of fear of retaliation by DEFENDANT,
28 which may adversely affect an individual's job with

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

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

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

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

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

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

24
25 **THE CALIFORNIA LABOR SUB-CLASS**

26 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
27 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
28 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in

1 California, including any employees staffed with DEFENDANT by a third party, and
2 classified as non exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any
3 time during the period three (3) years prior to the filing of the complaint and ending on the
4 date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”)
5 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate
6 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
7 (\$5,000,000.00).

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

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

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

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

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

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

- 16 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
18 CLASS all wages due for overtime worked, for which DEFENDANT is
19 liable pursuant to Cal. Lab. Code § 1194;
- 20 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
21 accurately pay PLAINTIFF and the members of the CALIFORNIA
22 LABOR SUB-CLASS the correct minimum wage pay for which
23 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 24 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
25 the members of the CALIFORNIA LABOR SUB-CLASS with an
26 accurate itemized statement in writing showing the corresponding
27 correct amount of wages earned by the employee;
- 28

- 1 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
2 PLAINTIFF and the other members of the CALIFORNIA LABOR
3 SUB-CLASS with all legally required off-duty, uninterrupted thirty
4 (30) minute meal breaks and the legally required off-duty rest breaks;
- 5 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
6 when an employee is discharged or quits from employment, the
7 employer must pay the employee all wages due without abatement, by
8 failing to tender full payment and/or restitution of wages owed or in the
9 manner required by California law to the members of the
10 CALIFORNIA LABOR SUB-CLASS who have terminated their
11 employment; and,
- 12 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
13 and the CALIFORNIA LABOR SUB-CLASS members with necessary
14 expenses incurred in the discharge of their job duties.

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

- 17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
18 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
19 CLASS Members is impracticable and the disposition of their claims as
20 a class will benefit the parties and the Court;
- 21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
22 issues that are raised in this Complaint are common to the
23 CALIFORNIA LABOR SUB-CLASS and will apply to every member
24 of the CALIFORNIA LABOR SUB-CLASS;
- 25 (c) The claims of the representative PLAINTIFF are typical of the claims
26 of each member of the CALIFORNIA LABOR SUB-CLASS.
27 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
28 SUB-CLASS, was a non-exempt employee paid on an hourly basis who

1 was subjected to the DEFENDANT's practice and policy which failed
2 to pay the correct amount of wages due to the CALIFORNIA LABOR
3 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members
5 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive, and unfair
7 misconduct engaged in by DEFENDANT; and,

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

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

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

- 23 1) Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA LABOR SUB-CLASS which
25 would establish incompatible standards of conduct for the
26 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
27 2) Adjudication with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS which would as a

1 practical matter be dispositive of interests of the other members
2 not party to the adjudication or substantially impair or impede
3 their ability to protect their interests.

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

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

- 18 1) The interests of the members of the CALIFORNIA LABOR
19 SUB-CLASS in individually controlling the prosecution or
20 defense of separate actions in that the substantial expense of
21 individual actions will be avoided to recover the relatively small
22 amount of economic losses sustained by the individual
23 CALIFORNIA LABOR SUB-CLASS Members when compared
24 to the substantial expense and burden of individual prosecution
25 of this litigation;
- 26 2) Class certification will obviate the need for unduly duplicative
27 litigation that would create the risk of:
28

- 1 A. Inconsistent or varying adjudications with respect to
2 individual members of the CALIFORNIA LABOR SUB-
3 CLASS, which would establish incompatible standards of
4 conduct for the DEFENDANT; and/or,
5 B. Adjudications with respect to individual members of the
6 CALIFORNIA LABOR SUB-CLASS would as a
7 practical matter be dispositive of the interests of the other
8 members not parties to the adjudication or substantially
9 impair or impede their ability to protect their interests;
- 10 3) In the context of wage litigation because a substantial number of
11 individual CALIFORNIA LABOR SUB-CLASS Members will
12 avoid asserting their legal rights out of fear of retaliation by
13 DEFENDANT, which may adversely affect an individual's job
14 with DEFENDANT or with a subsequent employer, the Class
15 Action is the only means to assert their claims through a
16 representative; and,
- 17 4) A class action is superior to other available methods for the fair
18 and efficient adjudication of this litigation because class
19 treatment will obviate the need for unduly and unnecessary
20 duplicative litigation that is likely to result in the absence of
21 certification of this action pursuant to Cal. Code of Civ. Proc. §
22 382.

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

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

- 1 (b) A Class Action is superior to any other available method for the fair
2 and efficient adjudication of the claims of the members of the
3 CALIFORNIA LABOR SUB-CLASS because in the context of
4 employment litigation a substantial number of individual
5 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
6 their rights individually out of fear of retaliation or adverse impact on
7 their employment;
- 8 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
9 numerous that it is impractical to bring all members of the
10 CALIFORNIA LABOR SUB-CLASS before the Court;
- 11 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
12 Members, will not be able to obtain effective and economic legal
13 redress unless the action is maintained as a Class Action;
- 14 (e) There is a community of interest in obtaining appropriate legal and
15 equitable relief for the acts of unfair competition, statutory violations
16 and other improprieties, and in obtaining adequate compensation for
17 the damages and injuries which DEFENDANT's actions have inflicted
18 upon the CALIFORNIA LABOR SUB-CLASS;
- 19 (f) There is a community of interest in ensuring that the combined assets of
20 DEFENDANT are sufficient to adequately compensate the members of
21 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 22 (g) DEFENDANT has acted or refused to act on grounds generally
23 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
24 making final class-wide relief appropriate with respect to the
25 CALIFORNIA LABOR SUB-CLASS as a whole;
- 26 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
27 ascertainable from the business records of DEFENDANT. The
28 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA

1 CLASS Members who worked for DEFENDANT in California at any
2 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
3 (i) Class treatment provides manageable judicial treatment calculated to
4 bring a efficient and rapid conclusion to all litigation of all wage and
5 hour related claims arising out of the conduct of DEFENDANT as to
6 the members of the CALIFORNIA LABOR SUB-CLASS.

7
8 **FIRST CAUSE OF ACTION**

9 **For Unlawful Business Practices**

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

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

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

49. By the conduct alleged herein, DEFENDANT has engaged and continues to
engage in a business practice which violates California law, including but not limited to, the

1 applicable Industrial Wage Order(s), the California Code of Regulations and the California
2 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
3 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
4 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
5 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
6 held to constitute unfair competition, including restitution of wages wrongfully withheld.

7 50. By the conduct alleged herein, DEFENDANT's practices were unlawful and
8 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
9 unscrupulous or substantially injurious to employees, and were without valid justification or
10 utility for which this Court should issue equitable and injunctive relief pursuant to Section
11 17203 of the California Business & Professions Code, including restitution of wages
12 wrongfully withheld.

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

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

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

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

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

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

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

25 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled
26 to, and do, seek such relief as may be necessary to restore to them the money and property
27 which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
28

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
2 unfair business practices, including earned but unpaid wages for all time worked.

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

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

14
15 **SECOND CAUSE OF ACTION**

16 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

1 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
2 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
3 Members to work without paying them for all the time they were under DEFENDANT's
4 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
5 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
6 that they were entitled to, constituting a failure to pay all earned wages.

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

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

20 73. 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 time worked and provide them with the requisite 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 and utter disregard for their legal rights, or the consequences to them, and
26 with the despicable intent of depriving them of their property and legal rights, and otherwise
27 causing them injury in order to increase company profits at the expense of these employees.
28

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

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code § 510]

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

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

76. 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 pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

77. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and

1 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

23 82. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
25 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
26 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
27 violation of the California Labor Code, the Industrial Welfare Commission requirements
28 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful

1 wage practices as alleged herein, the PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
3 worked.

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

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

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

22 86. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
24 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
26 economic injury in amounts which are presently unknown to them and which will be
27 ascertained according to proof at trial.
28

1 87. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
3 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
5 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
6 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

28 ///

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

9 91. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
10 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
11 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
12 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
13 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
14 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
15 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
16 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
17 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
18 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
19 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
20 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
21 second off-duty meal period in some workdays in which these employees were required by
22 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
23 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
24 breaks without additional compensation and in accordance with DEFENDANT's strict
25 corporate policy and practice.

26 92. DEFENDANT further violates California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
28 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with

1 the applicable Wage Order, one additional hour of compensation at each employee's regular
2 rate of pay for each workday that a meal period was not provided.

3 93. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
5 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
6 suit.

7
8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

27 96. DEFENDANT further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA

LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

98. 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.

99. 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 piecerate 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.

1 100. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
3 wage statements which failed to show, among other things, the correct gross and net wages
4 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
5 employees with an accurate itemized wage statement in writing showing, among other
6 things, gross wages earned and all applicable hourly rates in effect during the pay period and
7 the corresponding amount of time worked at each hourly rate. PLAINTIFF and
8 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
9 wage statements should reflect all applicable hourly rates during the pay period and the total
10 hours worked, and the applicable pay period in which the wages were earned pursuant to
11 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
12 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
13 such information. More specifically, the wage statements failed to identify the accurate total
14 hours worked each pay period. When the hours shown on the wage statements were added
15 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
16 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
17 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
18 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
19 to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS with wage statements which violated Cal. Lab. Code § 226.

21 101. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
22 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct wages for all missed meal and rest breaks and the amount
25 of employment taxes which were not properly paid to state and federal tax authorities.
26 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
28 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred

1 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
2 226, in an amount according to proof at the time of trial (but in no event more than four
3 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
4 CALIFORNIA LABOR SUB-CLASS herein).

5
6 **SEVENTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 2802]**

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

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

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

15 An employer shall indemnify his or her employee for all necessary
16 expenditures or losses incurred by the employee in direct consequence of the
17 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.

18 104. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
19 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
20 CLASS members for required expenses incurred in the discharge of their job duties for
21 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
22 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
23 limited to, costs related to using their personal cellular phones on behalf of and for the
24 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
25 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
26 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
27 and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
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1 CLASS members for expenses resulting from using their personal cellular phones and home
2 offices for DEFENDANT within the course and scope of their employment for
3 DEFENDANT. These expenses were necessary to complete their principal job duties.
4 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
6 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
7 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
8 these expenses as an employer is required to do under the laws and regulations of California.

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

13 **EIGHTH CAUSE OF ACTION**

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

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

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

17 **and Against All Defendants)**

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

21 107. Cal. Lab. Code § 200 provides, in relevant part, that:

22 As used in this article:

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

25 (b) "Labor" includes labor, work, or service whether rendered or
performed under contract, subcontract, partnership, station plan, or other
26 agreement if the labor to be paid for is performed personally by the person
demanding payment.
27
28

1 108. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer
2 discharges an employee, the wages earned and unpaid at the time of discharge are due and
3 payable immediately.”

4 109. Cal. Lab. Code § 202 provides, in relevant part, that:

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

15 110. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR
16 SUB-CLASS Members’ employment contract.

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

18 If an employer willfully fails to pay, without abatement or reduction, in
19 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
20 employee who is discharged or who quits, the wages of the employee shall
21 continue as a penalty from the due date thereof at the same rate until paid
22 or until an action therefor is commenced; but the wages shall not continue
23 for more than 30 days.

24 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
25 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
26 owed as required by law.

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

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1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

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

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

5 **and Against All Defendants)**

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

9 115. Cal Lab. Code § 233 provides that an employer must permit an employee to
10 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
11 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
12 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
13 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
14 right to sick pay wages, which an employer must calculate and compensate based on one of
15 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
16 same manner as the regular rate of pay for the workweek in which the employee uses paid
17 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
18 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
19 total wages, not including overtime premium pay, by the employee's total hours worked in
20 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
21 233, employees may sue to recover underpaid sick pay wages as damages.

22 116. As a matter of policy and practice, DEFENDANT pays sick pay wages to
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
24 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
25 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
26 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
27 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
28 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-

1 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total hours
3 worked in the full pay periods of the prior 90 days of employment. As a result,
4 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
5 CALIFORNIA LABOR-SUB-CLASS.

6 117. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
7 during each calendar month and are to be paid no later than the payday for the next regular
8 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
9 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
10 no later than the payday for the next regular payroll period after accrued sick leave is used as
11 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
12 employee, wages earned and unpaid at the time of discharge are due and payable
13 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
14 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
15 the employee has given 72-hour notice of his or her intention to quit, in which case the
16 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
17 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
18 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
19 wages of the employee shall continue as a penalty from the due date, and at the same rate
20 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
21 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
22 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
23 sue to recover applicable penalties.

24 118. As alleged herein and as a matter of policy and practice, DEFENDANT
25 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
26 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
27 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
28 among other Labor Code provisions. PLAINTIFF is informed and believes that

1 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
2 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
3 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
4 include those benefits to which an employee is entitled as a part of his or her compensation,
5 including money, room, board, clothing, vacation pay, *and sick pay.*" *Murphy v. Kenneth*
6 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
7 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
8 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
9 penalties.

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

14
15 **TENTH CAUSE OF ACTION**

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

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

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

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

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

1 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
2 claims cannot be subject to arbitration.

3 122. PLAINTIFF, and such persons that may be added from time to time who
4 satisfy the requirements and exhaust the administrative procedures under the Private
5 Attorney General Act, brings this Representative Action on behalf of the State of California
6 with respect to himself and all individuals who are or previously were employed by
7 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
8 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
9 time period of July 11, 2021 until a date as determined by the Court (the "PAGA PERIOD").

10 123. On July 11, 2022, PLAINTIFF gave written notice by electronic mail to the
11 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
12 employer of the specific provisions of this code alleged to have been violated as required by
13 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
14 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
15 now commence a representative civil action under PAGA pursuant to Section 2699 as the
16 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
17 defined.

18 124. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
20 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
21 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
22 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
23 required expenses, and (f) failed to provide wages when due, all in violation of the
24 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
25 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
26 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
27 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
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1 conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
2 Code Private Attorney General Act of 2004 as the representative of the State of California
3 for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

4 125. All of the conduct and violations alleged herein occurred during the PAGA
5 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
6 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
7 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
8 2018 AJDAR 12157 (Certified for Publication 12/19/18).

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
12 severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
2 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
3 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
7 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
8 statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;
- 16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197;
- 18 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
19 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
20 costs of suit.; and,
- 21 G) The wages of all terminated employees in the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
23 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 24 3. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:
- 26 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004.
- 28 4. On all claims:

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DEMAND FOR A JURY TRIAL

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

Dated: November 9, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Nicholas J. De Blouw
Attorneys for Plaintiff