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ELECTRONICALLY FILED

Superior Court of California

County of Sonoma

4/17/2024 3:02 PM

By: Lorena Deloza, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

ROBERT TOOTHMAN, an individual, on behalf of
himself and on behalf of all persons similarly situated,

Plaintiff,

vs.

REDWOOD TOXICOLOGY LABORATORY, INC.,
a Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. SCV-271680

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

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et. seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et. seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B), AND THE APPLICABLE WAGE ORDER(S).

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT provides substance abuse screening products and lab services to government,
10 criminal justice and addiction treatment marketplaces.

11 3. PLAINTIFF was employed by DEFENDANT in California from January of 2018 to June of
12 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and
13 entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all
14 time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as
16 all individuals who are or previously were employed by DEFENDANT in California and classified as non-
17 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior
18 to the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS
19 PERIOD”), and excluding any workers staffed with Defendant by a third party while those workers were on
20 assignment with Defendant. The CALIFORNIA CLASS does not exclude individuals, such as Plaintiff, who
21 were both direct employees and non-direct/staffed workers of Defendant at different periods of time, but
22 excludes any time such individuals were not direct employees of Defendant. The amount in controversy for the
23 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00)

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

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

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

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

20 21 **THE CONDUCT**

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to
23 pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during
24 which an employee is subject to the control of an employer, including all the time the employee is suffered or
25 permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without
26 paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT
27 requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal
28 break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should

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

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

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

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

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

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

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

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

18 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members
19 of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other
20 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish
21 each of his or her employees with an accurate itemized wage statement in writing showing, among other things,
22 gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount
23 of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS Members were paid on an hourly
24 basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total
25 hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code
26 Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS
27 Members failed to identify such information. More specifically, the wage statements failed to identify the
28 accurate total hours worked each pay period. When the hours shown on the wage statements were added up,

1 they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2).
2 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
3 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
4 DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS
5 with wage statements which violated Cal. Lab. Code § 226.

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

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

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

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

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

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

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

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

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

25 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS Members as
26 a business expense, were required by DEFENDANT to use their own personal cellular phones as a result of and
27 in furtherance of their job duties as employees for DEFENDANT but are not reimbursed or indemnified by
28 DEFENDANT for the cost associated with the use of their personal cellular phones for DEFENDANT's benefit.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
2 their personal cellular phones. As a result, in the course of their employment with DEFENDANT, PLAINTIFF
3 and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included,
4 but were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the
5 benefit of DEFENDANT.

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

15 **JURISDICTION AND VENUE**

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

20 26. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and
21 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently
22 maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial
23 business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members
24 of the CALIFORNIA CLASS.

25 **THE CALIFORNIA CLASS**

26 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business
27 Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal.
28 Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were

1 employed by DEFENDANT in California and classified as non-exempt employees (the “CALIFORNIA
2 CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending
3 on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”), and excluding any workers
4 staffed with Defendant by a third party while those workers were on assignment with Defendant. The
5 CALIFORNIA CLASS does not exclude individuals, such as Plaintiff, who were both direct employees and
6 non-direct/staffed workers of Defendant at different periods of time, but excludes any time such individuals
7 were not direct employees of Defendant. The amount in controversy for the aggregate claim of CALIFORNIA
8 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

- 25 1) With respect to the First Cause of Action, the final relief on behalf of the
26 CALIFORNIA CLASS sought does not relate exclusively to restitution
27 because through this claim PLAINTIFF seeks declaratory relief holding that
28 the DEFENDANT's policy and practices constitute unfair competition, along

1 with declaratory relief, injunctive relief, and incidental equitable relief as may
2 be necessary to prevent and remedy the conduct declared to constitute unfair
3 competition;

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

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

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

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

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

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

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

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

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

- 1 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
3 respect to the CALIFORNIA CLASS as a whole;
- 4 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
5 business records of DEFENDANT; and,
- 6 (i) Class treatment provides manageable judicial treatment calculated to bring a efficient
7 and rapid conclusion to all litigation of all wage and hour related claims arising out
8 of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

13
14 **THE CALIFORNIA LABOR SUB-CLASS**

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

22 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission
23 ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly,
24 and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the
25 time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting
26 time wages owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required
27 employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these
28 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to

1 unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by
2 the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS
3 PERIOD should be adjusted accordingly.

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

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

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

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

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

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

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

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

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

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

17 44. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
18 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, statutory and
20 other legal questions within the class format, prosecution of separate actions by
21 individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk
22 of:
- 23 1) Inconsistent or varying adjudications with respect to individual members of
24 the CALIFORNIA LABOR SUB-CLASS which would establish incompatible
25 standards of conduct for the parties opposing the CALIFORNIA LABOR
26 SUB-CLASS; or,
- 27 2) Adjudication with respect to individual members of the CALIFORNIA
28 LABOR SUB-CLASS which would as a practical matter be dispositive of

1 interests of the other members not party to the adjudication or substantially
2 impair or impede their ability to protect their interests.

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

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

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

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

23 A. Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA LABOR SUB-CLASS, which would
25 establish incompatible standards of conduct for the DEFENDANT;
26 and/or,

27 B. Adjudications with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS would as a practical matter be

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

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

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

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

11 Any person who engages, has engaged, or proposes to engage in unfair competition may be
12 enjoined in any court of competent jurisdiction. The court may make such orders or judgments,
13 including the appointment of a receiver, as may be necessary to prevent the use or employment
14 by any person of any practice which constitutes unfair competition, as defined in this chapter,
15 or as may be necessary to restore to any person in interest any money or property, real or
16 personal, which may have been acquired by means of such unfair competition.

14 Cal. Bus. & Prof. Code § 17203.

15 49. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
16 business practice which violates California law, including but not limited to, the applicable Industrial Wage
17 Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210, 221,
18 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor Standards Act and federal regulations
19 promulgated thereunder, for which this Court should issue declaratory and other equitable relief pursuant to
20 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
21 unfair competition, including restitution of wages wrongfully withheld.

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

27 51. By the conduct alleged herein, DEFENDANT’s practices were deceptive and fraudulent in that
28 DEFENDANT’s policy and practice failed to provide the legally mandated meal and rest periods, the required

1 amount of compensation for missed meal and rest periods and overtime and minimum wages owed, failed to
2 timely pay wages, and failed to reimburse all necessary business expenses incurred, and failed to provide Fair
3 Labor Standards Act overtime wages due for overtime worked as a result of failing to include non-discretionary
4 incentive compensation into their regular rates of pay for purposes of computing the proper overtime pay due
5 to a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
6 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
7 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
8 wrongfully withheld.

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

12 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
13 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally required meal
14 breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§
15 226.7 and 512.

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

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

23 56. By and through the unlawful and unfair business practices described herein, DEFENDANT
24 has obtained valuable property, money and services from PLAINTIFF and the other members of the
25 CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable rights
26 and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of
27 DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.
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1 57. All the acts described herein as violations of, among other things, the Industrial Welfare
2 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful
3 and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and
4 thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§
5 17200, *et seq.*

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

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

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

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

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

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

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

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

25 73. In performing the acts and practices herein alleged in violation of California labor laws, and
26 refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and
27 provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally,
28 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the
2 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in
3 order to increase company profits at the expense of these employees.

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

14
15 **THIRD CAUSE OF ACTION**

16 **For Failure To Pay Overtime Compensation**

17 **[Cal. Lab. Code § 510]**

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

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

21
22 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim
23 for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare
24 Commission requirements for DEFENDANT's failure to pay these employees for all overtime worked,
25 including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
26 and/or forty (40) hours in any workweek.

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

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

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

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

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

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

24 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
25 from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF and
26 the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other members
27 of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining agreement that
28 would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF brings this Action

1 on behalf of himself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
2 negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

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

89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all overtime 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 and/or overtime 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.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

90. 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.

91. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10)

1 hours of work from time to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR
2 SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with
3 DEFENDANT's strict corporate policy and practice.

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

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

11
12 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 96. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage
28 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 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

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

21 22 **SEVENTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 2802]**

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

26 102. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.
28

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

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

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

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

25 ///

26 ///

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EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

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

107. Cal. Lab. Code § 200 provides, in relevant part, that:
As used in this article:

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

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

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

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

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

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

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

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

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

113. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the

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

6
7 **NINTH CAUSE OF ACTION**

8 **For Failure to Pay Sick Pay Wages**

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

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

11 **and Against All Defendants)**

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

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

26 116. As a matter of policy and practice, DEFENDANT pays sick pay wages to PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS at the incorrect rate of pay. PLAINTIFF and the
28 other members of the CALIFORNIA LABOR-SUB-CLASS regularly use accrued sick leave in the workweeks

1 in which they also earn non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick
2 pay wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS at the base
3 hourly pay, as opposed to the regular rate of pay, which would consider all non-hourly remuneration in addition
4 to base hourly wages, or the rate resulting from dividing the employee's total wages, not including overtime
5 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
6 As a result, DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
7 CALIFORNIA LABOR-SUB-CLASS.

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

23 118. As alleged herein and as a matter of policy and practice, DEFENDANT
24 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other members of the
25 CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result, DEFENDANT
26 violates Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code provisions. PLAINTIFF is
27 informed and believes that DEFENDANT was advised by skilled lawyers and knew, or should have known,
28 of the mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the California

1 Supreme Court has explained that “[c]ourts have recognized that ‘wages’ also include those benefits to which
2 an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation
3 pay, and sick pay.” *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added).
4 Because DEFENDANT willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
5 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable penalties.

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

9 **TENTH CAUSE OF ACTION**

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

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

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

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

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

24 122. PLAINTIFF, and such persons that may be added from time to time who satisfy the
25 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this
26 Representative Action on behalf of the State of California with respect to himself and all individuals who
27 are or previously were employed by Defendant in California, and classified as non-exempt employees
28 (“AGGRIEVED EMPLOYEES”) during the time period of October 18, 2021 until a date as determined by

1 the Court (the "PAGA PERIOD"), and excluding any workers staffed with Defendant by a third party while
2 those workers were on assignment with Defendant. The AGGRIEVED EMPLOYEE Definition does not
3 exclude individuals, such as Plaintiff, who were both direct employees and non-direct/staffed workers of
4 Defendant at different periods of time, but excludes any time such individuals were not direct employees of
5 Defendant.

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

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

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

125. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018).

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an

- 1 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal.
2 Lab. Code § 226;
- 3 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
4 applicable IWC Wage Order;
- 5 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- 6 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR
7 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
- 8 G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a
9 penalty from the due date thereof at the same rate until paid or until an action therefore is
10 commenced, in accordance with Cal. Lab. Code § 203.

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

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

14 B) An award of attorneys' fees and cost of suit, as allowable under the
15 law, including, but not limited to, pursuant to Labor Code §2699.

16 4. On all claims:

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

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

19 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including,
20 but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802

21 .

22 Dated: April 17, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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By: Nicholas J. De Blouw
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: April 17, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: Nicholas J. De Blouw
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw
Attorneys for Plaintiff