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21
22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **IN AND FOR THE COUNTY OF SAN DIEGO**
24

25 SANTIAGO AVALOS, an individual, on
26 behalf of himself and on behalf of all
27 persons similarly situated,

28 Plaintiff,

v.

SUMMIT FOOD SERVICE, LLC., a New
Mexico Limited Liability Company; and
DOES 1-50, Inclusive,

Defendant(s).

Case No. 37-2022-00034903-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

[additional causes of action continued on next page]

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- 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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR JURY TRIAL

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

PRELIMINARY ALLEGATIONS

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1. Defendant SUMMIT FOOD SERVICE, LLC. (“DEFENDANT” or “DEFENDANTS”) is a New Mexico Limited Liability Company and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

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2. DEFENDANT operates a food service contracting company in the County of San Diego.

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3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from August 4, 2021 to present. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all the time worked.

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4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all individuals who are or previously were employed by DEFENDANT

1 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at
2 any time between during the period beginning four (4) years prior to the filing of the
3 complaint and ending on the date as determined by the Court (the “CALIFORNIA
4 CLASS PERIOD”). The amount in controversy for the aggregate claim of
5 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

18 6. The true names and capacities, whether individual, corporate, subsidiary,
19 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
20 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
21 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
22 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
23 they are ascertained. PLAINTIFF is informed and believes, and based upon that
24 information and belief alleges, that the Defendants named in this Complaint, including
25 DOES 1 through 50, inclusive, are responsible in some manner for one or more of the
26 events and happenings that proximately caused the injuries and damages hereinafter
27 alleged
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7. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended. DEFENDANT instructed PLAINTIFF to work off the clock in order to avoid working overtime. DEFENDANT required PLAINTIFF and the CALIFORNIA CLASS Members to work off the clock without paying them for all the time they performed duties while on their meal break, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and the CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. From time to time, PLAINTIFF was also often interrupted by work assignments during his breaks. Indeed there were many days where PLAINTIFF did not even receive a partial meal break. Further, during the CALIFORNIA CLASS PERIOD, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to wait in line and submit to mandatory temperature

1 checks for COVID-19 screening and also complete a COVID -19 questionnaire regarding
2 whether these employees had any symptoms prior to clocking into DEFENDANT's
3 timekeeping systems for the workday. Finally, PLAINTIFF and other members of the
4 CALIFORNIA CLASS from time to time were not paid wages for all the time worked,
5 including overtime wages, such that in the aggregate employees were underpaid wages as
6 a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
7 employees. DEFENDANT's pattern and practice of unevenly rounding time worked by
8 its employees. DEFENDANTS also underpaid sick pay wages to PLAINTIFFS and other
9 CALIFORNIA CLASS MEMBERS by failing to pay such wages at the regular rate of
10 pay. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members, from time
11 to time, forfeited minimum wage and overtime compensation by working without their
12 time being accurately recorded and without compensation at the applicable minimum
13 wage and overtime rates. DEFENDANT'S uniform policy and practice not to pay
14 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced
15 by DEFENDANT'S business records.

16 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT used
17 PLAINTIFF's and other CALIFORNIA CLASS Members accrued sick pay and vacation
18 pay when they tested positive for Covid, when DEFENDANT should have used
19 California Covid Pay.

20 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have
21 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
22 other CALIFORNIA CLASS Members for the actual time these employees worked each
23 day, including overtime hours. As a result DEFENDANT was able to and did in fact
24 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping
25 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
26 paying these employees the applicable overtime compensation for overtime worked and
27 to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
28 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by

1 working without their time being accurately recorded and without compensation at the
2 applicable overtime rates.

3 11. The mutability of the timekeeping system also allowed DEFENDANT to
4 alter employee time records by recording fictitious thirty (30) minute meal breaks in
5 DEFENDANT's timekeeping system so as to create the appearance that PLAINTIFF and
6 other CALIFORNIA CLASS Members clocked out for a thirty (30) minute meal break
7 when in fact the employees were not at all times provided an off-duty meal break. This
8 practice is a direct result of DEFENDANTS' uniform policy and practice of denying
9 employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
10 compensate them for missed meal breaks

11 12. As a result of their rigorous work schedules, PLAINTIFF and other
12 CALIFORNIA CLASS Members were also from time to time unable to take off duty
13 meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
14 CALIFORNIA CLASS Members were required to perform work as ordered by
15 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
16 meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA
17 CLASS Members with a second off-duty meal period each workday in which these
18 employees were required by DEFENDANT to work ten (10) hours of work. From time to
19 time, when a meal break was provided, PLAINTIFF was required to remain on
20 DEFENDANT's premises, on-call and on-duty, and was interrupted with work.
21 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
22 breaks without additional compensation and in accordance with DEFENDANT's strict
23 corporate policy and practice

24 13. During the CALIFORNIA CLASS PERIOD, from time to time,
25 PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in
26 excess of four (4) hours without being provided ten (10) minute rest periods. Further,
27 these employees were denied their first rest periods of at least ten (10) minutes for some
28 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least

1 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a
2 first, second and third rest period of at least ten (10) minutes for some shifts worked of
3 ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were
4 also not provided with one hour wages in lieu thereof. As a result of their rigorous work
5 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically
6 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.
7 Additionally, the applicable California Wage Order requires employers to provide
8 employees with off-duty rest periods, which the California Supreme Court defined as
9 time during which an employee is relieved from all work related duties and free from
10 employer control. In so doing, the Court held that the requirement under California law
11 that employers authorize and permit all employees to take rest period means that
12 employers must relieve employees of all duties and relinquish control over how
13 employees spend their time which includes control over the locations where employees
14 may take their rest period. Employers cannot impose controls that prohibit an employee
15 from taking a brief walk – five minutes out, five minutes back. Here, DEFENDANT's
16 policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
17 unconstrained walks and was unlawful based on DEFENDANT's rule which stated
18 PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work
19 premises during their rest period.

20 14. State law provides that employees must be paid overtime and meal and rest
21 break premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF
22 and other CALIFORNIA CLASS Members were compensated at an hourly rate plus
23 incentive pay that was tied to specific elements of an employee's performance.

24 15. When PLAINTIFF and other CALIFORNIA CLASS Members were not
25 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANT also
26 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
27 complete and accurate wage statements which failed to show, among other things, the
28 time worked, including, work performed in excess of eight (8) hours in a workday and/or

1 forty (40) hours in any workweek, and the correct penalty payments or missed meal and
2 rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his
3 or her employees with an accurate itemized wage statement in writing showing, among
4 other things, gross wages earned and all applicable hourly rates in effect during the pay
5 period and the corresponding amount of time worked at each hourly rate. Aside, from the
6 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
7 itemized wage statement that lists all the requirements under California Labor Code 226
8 *et seq.*, As a result, from time to time DEFENDANT provided PLAINTIFF and the other
9 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
10 Code § 226.

11 16. By reason of this uniform conduct applicable to PLAINTIFF and all
12 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition
13 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
14 *et seq.* (the “UCL”), by engaging in a company-wide policy and procedure which failed to
15 accurately calculate and record the correct time and overtime for the time worked by
16 PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
17 employees’ time is the DEFENDANT’s burden. As a result of DEFENDANT’s
18 intentional disregard of the obligation to meet this burden, DEFENDANT failed to
19 properly calculate and/or pay all required compensation for work performed by the
20 members of the CALIFORNIA CLASS and violated the California Labor Code and
21 regulations promulgated thereunder as herein alleged.

22 17. DEFENDANT as a matter of corporate policy, practice and procedure,
23 intentionally, knowingly and systematically failed to reimburse and indemnify the
24 PLAINTIFF and the other CALIFORNIA CLASS Members for required business
25 expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in
26 direct consequence of discharging their duties on behalf of DEFENDANT. Under
27 California Labor Code Section 2802, employers are required to indemnify employees for
28 all expenses incurred in the course and scope of their employment. Cal. Lab. Code §

1 2802 expressly states that "an employer shall indemnify his or her employee for all
2 necessary expenditures or losses incurred by the employee in direct consequence of the
3 discharge of his or her duties, or of his or her obedience to the directions of the employer,
4 even though unlawful, unless the employee, at the time of obeying the directions,
5 believed them to be unlawful."

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

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

27 20. Specifically as to PLAINTIFF's pay, PLAINTIFF was from time to time
28 unable to take off duty meal and rest breaks and was not fully relieved of duty for his

1 meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT
2 for more than five (5) hours during a shift without receiving an off-duty meal break.
3 Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
4 each workday in which he was required by DEFENDANT to work ten (10) hours of
5 work. PLAINTIFF therefore forfeited meal and rest breaks without additional
6 compensation and in accordance with DEFENDANT's strict corporate policy and
7 practice. To date, DEFENDANT have not fully paid PLAINTIFF the minimum wage
8 and overtime and sick pay compensation still owed to his or any penalty wages owed to
9 them under Cal. Lab. Code § 203.

10 **JURISDICTION AND VENUE**

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

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

21 **THE CALIFORNIA CLASS**

22 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
23 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
24 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
25 California class, defined as all individuals who are or previously were employed by
26 Defendant and/or Defendant in California and classified as non-exempt employees (the
27 "CALIFORNIA CLASS") at any time between November 1, 2017 and the date as
28 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in

1 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
2 million dollars (\$5,000,000.00).

3 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
4 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
5 accordingly.

6 25. The CALIFORNIA CLASS is so numerous that joinder of all
7 CALIFORNIA CLASS Members is impracticable.

8 26. DEFENDANT, as a matter of company policy, practice and procedure, and
9 in violation of the applicable Labor Code, Industrial Welfare Commissions (“IWC”) Wage
10 Order requirements, and the applicable provisions of California law, intentionally,
11 knowingly, and willfully, engages in practice whereby DEFENDANT fails to record all
12 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
13 even though DEFENDANT enjoys the benefit of this work, requires employees to perform
14 this work and permits or suffers to permit this work.

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

24 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
25 under California law by:

- 26 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
27 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
28 company policies, practices and procedures that failed to pay all wages due

1 the CALIFORNIA CLASS for all minimum wages, sick pay and overtime
2 worked.

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

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

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

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

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

20 c. The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other
22 members of the CALIFORNIA CLASS, was subjected to the uniform
23 employment practices of DEFENDANT and was a non-exempt employee
24 paid on an hourly basis and paid additional non-discretionary incentive
25 wages who was subjected to the DEFENDANT's practice and policy which
26 failed to pay the correct rate of overtime wages due to the CALIFORNIA
27 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
28 systematically under pays overtime compensation to the CALIFORNIA

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

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

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

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

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

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

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

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

27 ii. Class certification will obviate the need for unduly duplicative
28 litigation that would create the risk of:

- 1 1. Inconsistent or varying adjudications with respect to
2 individual members of the CALIFORNIA CLASS, which
3 would establish incompatible standards of conduct for the
4 DEFENDANT; and/or;
5 2. Adjudications with respect to individual members of the
6 CALIFORNIA CLASS would as a practical matter be
7 dispositive of the interests of the other members not parties to
8 the adjudication or substantially impair or impede their ability
9 to protect their interests;
10 iii. In the context of wage litigation, because a substantial number of
11 individual CALIFORNIA CLASS Members will avoid asserting their
12 legal rights out of fear of retaliation by DEFENDANT, which may
13 adversely affect an individual’s job with DEFENDANT or with a
14 subsequent employer, the Class Action is the only means to assert
15 their claims through a representative; and
16 iv. A class action is superior to other available methods for the fair and
17 efficient adjudication of this litigation because class treatment will
18 obviate the need for unduly and unnecessary duplicative litigation
19 that is likely to result in the absence of certification of this action
20 pursuant to Cal. Code of Civ. Proc. § 382.
21 31. The Court should permit this action to be maintained as a Class Action
22 pursuant to Cal. Code of Civ. Proc. § 382 because:
23 a. The questions of law and fact common to the CALIFORNIA CLASS
24 predominate over any question affecting only individual CALIFORNIA
25 CLASS Members because the DEFENDANT’s employment practices are
26 uniform and systematically applied with respect to the CALIFORNIA
27 CLASS.
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- 1 b. A Class Action is superior to any other available method for the fair and
2 efficient adjudication of the claims of the members of the CALIFORNIA
3 CLASS because in the context of employment litigation a substantial
4 number of individual CALIFORNIA CLASS Members will avoid asserting
5 their rights individually out of fear of retaliation or adverse impact on their
6 employment;
- 7 c. The members of the CALIFORNIA CLASS are so numerous that it is
8 impractical to bring all members of the CALIFORNIA CLASS before the
9 Court;
- 10 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
11 able to obtain effective and economic legal redress unless the action is
12 maintained as a Class Action;
- 13 e. There is a community of interest in obtaining appropriate legal and equitable
14 relief for the acts of unfair competition, statutory violations and other
15 improprieties, and in obtaining adequate compensation for the damages and
16 injuries which DEFENDANT's actions have inflicted upon the
17 CALIFORNIA CLASS;
- 18 f. There is a community of interest in ensuring that the combined assets of
19 DEFENDANT are sufficient to adequately compensate the members of the
20 CALIFORNIA CLASS for the injuries sustained;
- 21 g. DEFENDANT has acted or refused to act on grounds generally applicable
22 to the CALIFORNIA CLASS, thereby making final class-wide relief
23 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 24 h. The members of the CALIFORNIA CLASS are readily ascertainable from
25 the business records of DEFENDANT; and
- 26 i. Class treatment provides manageable judicial treatment calculated to bring
27 an efficient and rapid conclusion to all litigation of all wage and hour related
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claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

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

34. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly pay for all time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work. DEFENDANT have uniformly denied these CALIFORNIA LABOR SUB-CLASS Members minimum and overtime wages at the correct amount to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS

1 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
2 adjusted accordingly.

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

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

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

- 13 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
14 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
15 violation of the California Labor Code and California regulations and the
16 applicable California Wage Order;
- 17 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
18 entitled to overtime compensation for overtime worked under the overtime
19 pay requirements of California law;
- 20 c. Whether DEFENDANT failed to provide PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS with legally required
22 uninterrupted thirty (30) minute meal breaks and rest periods;
- 23 d. Whether DEFENDANT failed to provide PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS with accurate
25 itemized wage statements;
- 26 e. Whether DEFENDANT have engaged in unfair competition by the above-
27 listed conduct;

- f. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- g. Whether DEFENDANT's conduct was willful.

38. DEFENDANT, as a matter of company policy, practice and procedure, failed to accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the time worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT according to uniform and systematic company procedures as alleged herein above. This business practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

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

- a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay and sick pay for which DEFENDANT are liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

- 1 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
3 itemized statement in writing showing time worked at by the employee;
4 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
5 an employee is discharged or quits from employment, the employer must
6 pay the employee all wages due without abatement, by failing to tender full
7 payment and/or restitution of wages owed or in the manner required by
8 California law to the members of the CALIFORNIA LABOR SUB-CLASS
9 who have terminated their employment.

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

- 12 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
13 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
14 Members is impracticable and the disposition of their claims as a class will
15 benefit the parties and the Court;
16 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
17 that are raised in this Complaint are common to the CALIFORNIA LABOR
18 SUB-CLASS and will apply uniformly to every member of the
19 CALIFORNIA LABOR SUB-CLASS;
20 c. The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
22 like all the other members of the CALIFORNIA LABORSUB-CLASS, was
23 a non-exempt employee paid on an hourly basis and paid additional non-
24 discretionary incentive wages who was subjected to the DEFENDANT's
25 practice and policy which failed to pay the correct rate of overtime wages
26 due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked.
27 PLAINTIFF sustained economic injury as a result of DEFENDANT's
28 employment practices. PLAINTIFF and the members of the CALIFORNIA

1 LABOR SUB-CLASS were and are similarly or identically harmed by the
2 same unlawful, deceptive, unfair and pervasive pattern of misconduct
3 engaged in by DEFENDANT; and

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

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

- 15 a. Without class certification and determination of declaratory, injunctive,
16 statutory and other legal questions within the class format, prosecution of
17 separate actions by individual members of the CALIFORNIA LABOR SUB-
18 CLASS will create the risk of:
- 19 i. Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA LABOR SUB-CLASS which would
21 establish incompatible standards of conduct for the parties opposing
22 the CALIFORNIA LABOR SUB-CLASS; or
- 23 ii. Adjudication with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS which would as a practical
25 matter be dispositive of interests of the other members not party to
26 the adjudication or substantially impair or impede their ability to
27 protect their interests.
- 28

- 1 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
2 or refused to act on grounds generally applicable to the CALIFORNIA
3 LABOR SUB-CLASS, making appropriate class-wide relief with respect to
4 the CALIFORNIA LABOR SUB-CLASS as a whole in that
5 DEFENDANTS uniformly failed to pay all wages due, including the correct
6 overtime rate, for all overtime worked by the members of the CALIFORNIA
7 LABOR SUB-CLASS as required by law;
- 8 c. Common questions of law and fact predominate as to the members of the
9 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
10 violations of California Law as listed above, and predominate over any
11 question affecting only individual CALIFORNIA LABOR SUB-CLASS
12 Members, and a Class Action is superior to other available methods for the
13 fair and efficient adjudication of the controversy, including consideration of:
- 14 i. The interests of the members of the CALIFORNIA LABOR SUB-
15 CLASS in individually controlling the prosecution or defense of
16 separate actions in that the substantial expense of individual actions
17 will be avoided to recover the relatively small amount of economic
18 losses sustained by the individual CALIFORNIA LABOR SUB-
19 CLASS Members when compared to the substantial expense and
20 burden of individual prosecution of this litigation;
- 21 ii. Class certification will obviate the need for unduly duplicative
22 litigation that would create the risk of:
- 23 1. Inconsistent or varying adjudications with respect to
24 individual members of the CALIFORNIA LABOR SUB-
25 CLASS, which would establish incompatible standards of
26 conduct for the DEFENDANTS; and/or,
27 2. Adjudications with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS would as a practical

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

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

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

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

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

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

26 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous
27 that it is impractical to bring all members of the CALIFORNIA LABOR
28 SUB-CLASS before the Court;

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

25 **FIRST CAUSE OF ACTION**

26 **UNLAWFUL BUSINESS PRACTICES**

27 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

28 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

1 43. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
2 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
3 this Complaint.

4 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. And
5 Prof. Code § 17021.

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

10 Any person who engages, has engaged, or proposes to engage in unfair competition
11 may be enjoined in any court of competent jurisdiction. The court may make such
12 orders or judgments, including the appointment of a receiver, as may be necessary
13 to prevent the use or employment by any person of any practice which constitutes
14 unfair competition, as defined in this chapter, or as may be necessary to restore to
15 any person in interest any money or property, real or personal, which may have
16 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
17 17203).

18 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
19 engage in a business practice which violates California law, including but not limited to,
20 the applicable Wage Order(s), the California Code of Regulations and the California Labor
21 Code including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 &
22 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable
23 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
24 remedy the conduct held to constitute unfair competition, including restitution of wages
25 wrongfully withheld.

26 47. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
27 unfair in that these practices violated public policy, were immoral, unethical, oppressive
28 unscrupulous or substantially injurious to employees, and were without valid justification
or utility for which this Court should issue equitable and injunctive relief pursuant to

1 Section 17203 of the California Business & Professions Code, including restitution of
2 wages wrongfully withheld.

3 48. By the conduct alleged herein, DEFENDANT's practices were deceptive
4 and fraudulent in that DEFENDANT's uniform policy and practice failed to pay
5 PLAINTIFF, and other members of the CALIFORNIA CLASS, minimum wages, wages
6 due for overtime worked, and failed to provide the required amount of overtime
7 compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
8 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which
9 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
10 § 17203, including restitution of wages wrongfully withheld.

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

15 50. By the conduct alleged herein, DEFENDANT's practices were also unfair
16 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to
17 provide all legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
18 CLASS members as required by Cal. Lab. Code §§226.7 and 512.

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

24 52. PLAINTIFF further demands on behalf of himself and on behalf of each
25 CALIFORNIA CLASS member and CALIFORNIA LABOR SUB-CLASS, one (1) hour
26 of pay for each workday in which an off duty rest period rest period was not timely
27 provided as required by law.

1 53. By and through the unlawful and unfair business practices described herein,
2 DEFENDANT have obtained valuable property, money and services from PLAINTIFF
3 and the other members of the CALIFORNIA CLASS, including earned wages for all time
4 worked, and has deprived them of valuable rights and benefits guaranteed by law and
5 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as
6 to allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

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

23 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
24 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
25 practices of DEFENDANT. Further, the practices herein alleged presently continue to
26 occur unabated. As a result of the unlawful and unfair business practices described herein,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
28

1 continue to suffer irreparable legal and economic harm unless DEFENDANT are
2 restrained from continuing to engage in these unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

6 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**
7 **ALL Defendants)**

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

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

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

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

21 62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
22 wages, including reporting time pay and minimum wage compensation and interest
23 thereon, together with the costs of suit.

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

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

6 65. In committing these violations of the California Labor Code, DEFENDANT
7 inaccurately calculated the correct time worked and consequently underpays the actual
8 time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
9 CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned
10 wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
11 Commission requirements and other applicable laws and regulations.

12 66. As a direct result of DEFENDANT's unlawful wage practices as alleged
13 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 did not receive the correct reporting time pay and minimum wage compensation for their
15 time worked for DEFENDANT.

16 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
17 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
18 worked than they were entitled to, constituting a failure to pay all earned wages.
19 DEFENDANT fails to accurately pay the PLAINTIFF and members of the CALIFORNIA
20 LABOR SUB-CLASS the wages for the time they work in accordance with 1197 &
21 1197.1, even though the PLAINTIFF and the other members of the CALIFORNIA
22 LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in fact
23 work, off the clock time as to which DEFENDANT fails to accurately record and pay as
24 evidence by DEFENDANT's business records and witnessed by employees.

25 68. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
26 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true time they worked, PLAINTIFF and the other members of the
28 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an

1 economic injury in amounts which are presently unknown to them and which will be
2 ascertained according to proof at trial.

3 69. DEFENDANT knew or should have known that PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
5 time worked. DEFENDANTS systematically elected, either through intentional
6 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
7 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
8 systematic scheme by refusing to pay PLAINTIFF and the other members of the
9 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

1 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
2 Members are entitled to seek and recover statutory costs.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY OVERTIME COMPENSATION**
5 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**
6 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**
7 **ALL Defendants)**

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

11 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
12 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
13 California Labor Code and the Industrial Welfare Commission requirements for
14 DEFENDANT's failure to properly compensate the members of the CALIFORNIA
15 LABOR SUB-CLASS for all overtime worked, including, work performed in excess of
16 eight (8) hours in a workday and/or twelve (12) hours in a workday, and/or forty (40) hours
in any workweek.

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

19 75. Cal. Lab. Code § 510 further provides that employees in California shall not
20 be employed more than eight (8) hours per workday and/or more than forty (40) hours per
21 workweek unless they receive additional compensation beyond their regular wages in
22 amount specified by law.

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

27 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
28 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by

1 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
2 including overtime work.

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

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

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

20 81. As a direct result of DEFENDANT'S unlawful wage practices as alleged
21 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
22 did not receive full compensation for all overtime worked.

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

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

4 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
5 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
6 worked than they were entitled to, constituting a failure to pay all earned wages.

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

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

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

28 87. In performing the acts and practices herein alleged in violation of California
labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-

1 CLASS for all time worked and provide them with the requisite overtime compensation,
2 DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously
3 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
4 with a conscious and utter disregard for their legal rights, or the consequences to them, and
5 with the despicable intent of depriving them of their property and legal rights, and
6 otherwise causing them injury in order to increase company profits at the expense of these
7 employees.

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

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

22 **(Cal. Lab. Code §§ 226.7 & 512)**

23 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
24 **all Defendants)**

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

28 90. During the CALIFORNIA CLASS PERIOD, DEFENDANT 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

1 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
2 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved
3 of all of their duties for the legally required off-duty meal periods. As a result of their
4 rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
5 Members were often not fully relieved of duty by DEFENDANT for their meal periods.
6 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
7 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
8 hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF
9 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
10 breaks without additional compensation and in accordance with DEFENDANT's strict
11 corporate policy and practice.

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

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

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

23 **(Cal. Lab. Code §§ 226.7 & 512)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against
25 all Defendants)**

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

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

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

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

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

23 **(Cal. Lab. Code § 226)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
25 **and against all Defendants)**

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

1 98. Cal. Labor Code § 226 provides that an employer must furnish employees
2 within “accurate itemized” statement in writing showing:

- 3 a. Gross wages earned;
- 4 b. Total hours worked by the employee, except for any employee whose
5 compensation is solely based on a salary and who is exempt from payment
6 of overtime under subdivision (a) of Section 515 or any applicable order of
7 the Industrial Welfare Commission;
- 8 c. The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis;
- 10 d. All deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item;
- 12 e. Net wages earned;
- 13 f. The inclusive dates of the period for which the employee is paid;
- 14 g. The name of the employee and his or her social security number, except that
15 by January 1, 2008, only the last four digits of his or her social security
16 number or an employee identification number other than a social security
17 number may be shown on the itemized statement;
- 18 h. The name and address of the legal entity that is the employer; and
- 19 i. All applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 99. When PLAINTIFF and other CALIFORNIA CLASS Members were not
22 paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed
23 to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
24 complete and accurate wage statements which failed to show, among other things, the
25 correct gross and net wages earned, including, work performed in excess of eight (8) hours
26 in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
27 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
28 furnish each of his or her employees with an accurate itemized wage statement in writing

1 showing, among other things, gross wages earned and all applicable hourly rates in effect
2 during the pay period and the corresponding amount of time worked at each hourly rate.
3 Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
4 itemized wage statement that lists all the requirements under California Labor Code 226
5 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
6 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
7 Code § 226.

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

20 **SEVENTH CAUSE OF ACTION**
21 **FAILURE TO PAY WAGES WHEN DUE**
22 **(Cal. Lab. Code §§201, 202, 203)**
23 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
24 **all Defendants)**

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

27 102. Cal. Lab. Code § 200 provides, in relevant part, that:

28 As used in this article:

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

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

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

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

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

17 105. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
18 SUB-CLASS Members' employment contract.

19 106. Cal. Lab. Code § 203 provides:

20 If an employer willfully fails to pay, without abatement or reduction, in
21 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
22 employee who is discharged or who quits, the wages of the employee shall
23 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.

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

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

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

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

7 **(Cal. Lab. Code §§ 2802)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against
all Defendants)**

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

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

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

17 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
18 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
19 CLASS members for required expenses incurred in the discharge of their job duties for
20 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
21 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were
22 not limited to, costs related to using their personal cellular phones all on behalf of and for
23 the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS
24 Members were required by DEFENDANT to use their personal cell phones to respond to
25 work related issues. DEFENDANT's uniform policy, practice and procedure was to not
26 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
27 expenses resulting from using their personal cellular phones for DEFENDANT within the
28 course and scope of their employment for DEFENDANTS. These expenses were

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

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

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

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

- 28 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and

1 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-
2 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

3 b. Compensatory damages, according to proof at trial, including compensatory
4 damages for minimum wages and overtime compensation and unreimbursed
5 expenses due PLAINTIFF and the other members of the CALIFORNIA
6 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
7 CLASS PERIOD plus interest thereon at the statutory rate;

8 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
9 512 and the applicable IWC Wage Order;

10 d. Liquidated damages pursuant to California Labor Code §§ 1194.2 and
11 1197.1;

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

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

22 g. Penalties pursuant to Cal. Lab. Code §1198.5.

23 3. On all claims:

24 a. An award of interest, including prejudgment interest at the legal rate;

25 b. Such other and further relief as the Court deems just and equitable; and

26 c. An award of penalties, attorneys' fees and costs of suit, as allowable under
27 the law, including, but not limited to, pursuant to Labor Code §218.5, §226,
28 §1194 and/or §2802.

1
2 Dated: August 29, 2022

3 **BARVIÉ LAW, APC**

4 By 
5 _____
6 NICOLE BARVIÉ
7 Attorneys for Plaintiff(s)
8

9 **DEMAND FOR A JURY TRIAL**

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

11 Dated: August 29, 2022

12 **BARVIÉ LAW, APC**

13 By 
14 _____
15 NICOLE BARVIÉ
16 Attorneys for Plaintiff(s)
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