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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 JVONN GONZALEZ, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

13 Plaintiffs,

14 v.

15 THE TORO COMPANY, a Delaware
16 Corporation; and DOES 1-50, Inclusive,

17 Defendant(s).

Case No. 37-2022-00042665-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;
- 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) VIOLATION OF LABOR CODE §233 and §234; and

[Additional Causes of Action continued on next page]

10) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT
PURSUANT TO LABOR CODE
SECTIONS 2698, et seq.;

DEMAND FOR JURY TRIAL

Plaintiff JVONN GONZALEZ (“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

1. DEFENDANT THE TORO COMPANY (“DEFENDANT” or “DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

2. DEFENDANT is a gardening product seller and lawn mower manufacturer.

3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, accurate wage statements, overtime pay and meal and rest periods from September 20, 2021 to May 18, 2022. 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. DEFENDANT as a non-exempt employee is also entitled to accurate itemized wage statements.

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 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time between during the period beginning four (4) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA

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

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

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

25 7. The agents, servants and/or employees of the Defendant and each of them
26 acting on behalf of the Defendants acted within the course and scope of his, her or its
27 authority as the agent, servant and/or employee of the Defendants, and personally
28 participated in the conduct alleged herein on behalf of the Defendants with respect to the

1 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable
2 to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF
3 and the other members of the CALIFORNIA CLASS, for the loss sustained as a
4 proximate result of the conduct of the Defendants' agents, servants and/or employees.

5 THE CONDUCT

6 8. Pursuant to the Industrial Welfare Commission Wage Orders,
7 DEFENDANT is required to pay PLAINTIFF and the CALIFORNIA CLASS Members
8 for all their time worked, meaning the time during which an employee is subject to the
9 control of an employer, including all the time the employee is suffered or permitted to
10 work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA
11 CLASS Members to work without paying them for all the time they were under
12 DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work
13 while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break, as
14 well as before his shift started and after his shift ended. DEFENDANT required
15 PLAINTIFF and the CALIFORNIA CLASS Members to work off the clock without
16 paying them for all the time they performed duties while on their meal break, specifically
17 by failing to provide enough labor hours to accomplish all the job tasks that
18 DEFENDANT expected PLAINTIFF and the CALIFORNIA CLASS Members to
19 complete on a daily and/or weekly basis. From time to time, PLAINTIFF was also often
20 interrupted by work assignments during his breaks. Indeed there were many days where
21 PLAINTIFF did not even receive a partial meal break. PLAINTIFF and other
22 CALIFORNIA CLASS Members are not paid for their work time putting on their work
23 gear because they are not paid until they are ready to work prior to their shift.
24 DEFENDANT failed to pay PLAINTIFF and CALIFORNIA CLASS Members for this
25 donning and doffing time on the mandatory protective gear. Additionally, prior to
26 clocking in for a shift, PLAINTIFF and other CALIFORNIA CLASS Members are
27 required to put on their work uniforms and protective gear, including but not limited to,
28 oil resistant sole shoes, safety glasses, safety gloves, and ear plugs. Finally, PLAINTIFF

1 and other members of the CALIFORNIA CLASS from time to time were not paid wages
2 for all the time worked, including overtime wages, such that in the aggregate employees
3 were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly
4 rounding time worked by its employees. DEFENDANTS also underpaid sick pay wages
5 to PLAINTIFFS and other CALIFORNIA CLASS MEMBERS by failing to pay such
6 wages at the regular rate of pay. Specifically, PLAINTIFF and other non-exempt
7 employees regularly earn non-discretionary remuneration, including but not limited to,
8 incentives, shift differential pay and bonuses. Rather, than pay sick pay at the regular rate
9 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA
10 CLASS MEMBERS at their base rates of pay. As a result, PLAINTIFF and other
11 California CLASS Members forfeit minimum wage, overtime wage compensation, and
12 off-duty meal breaks by working without their time being correctly recorded and without
13 compensation at the applicable rates. As a result, the PLAINTIFF and other
14 CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and
15 overtime compensation by working without their time being accurately recorded and
16 without compensation at the applicable minimum wage and overtime rates.
17 DEFENDANT'S uniform policy and practice not to pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT'S
19 business records.

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

24 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have
25 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
26 other CALIFORNIA CLASS Members for the actual time these employees worked each
27 day, including overtime hours. As a result DEFENDANT was able to and did in fact
28 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping

1 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
2 paying these employees the applicable overtime compensation for overtime worked and
3 to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
4 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by
5 working without their time being accurately recorded and without compensation at the
6 applicable overtime rates.

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

15 12. As a result of their rigorous work schedules, PLAINTIFF and other
16 CALIFORNIA CLASS Members were also from time to time unable to take off duty
17 meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
18 CALIFORNIA CLASS Members were required to perform work as ordered by
19 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
20 meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA
21 CLASS Members with a second off-duty meal period each workday in which these
22 employees were required by DEFENDANT to work ten (10) hours of work. From time to
23 time, when a meal break was provided, PLAINTIFF was required to remain on
24 DEFENDANT's premises, on-call and on-duty, and was interrupted with work.
25 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
26 breaks without additional compensation and in accordance with DEFENDANT's strict
27 corporate policy and practice
28

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

25 14. When PLAINTIFF and other CALIFORNIA CLASS Members were not
26 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANT also
27 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
28 complete and accurate wage statements which failed to show, among other things, the

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

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

23 16. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission (“IWC”) Wage Order,
25 DEFENDANT as a matter of company policy, practice and procedure, intentionally and
26 knowingly failed to compensate PLAINTIFF and the other members of the
27 CALIFORNIA CLASS for missed meal and rest periods. This uniform policy and
28 practice of DEFENDANT is intended to purposefully avoid the payment for all time

1 worked as required by California law which allows DEFENDANT to illegally profit and
2 gain an unfair advantage over competitors who complied with the law. To the extent
3 equitable tolling operates to toll claims by the CALIFORNIA CLASS against
4 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

16 18. Specifically as to PLAINTIFF’s pay, PLAINTIFF was from time to time
17 unable to take off duty meal and rest breaks and was not fully relieved of duty for his
18 meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT
19 for more than five (5) hours during a shift without receiving an off-duty meal break.
20 Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
21 each workday in which he was required by DEFENDANT to work ten (10) hours of
22 work. PLAINTIFF therefore forfeited meal and rest breaks without additional
23 compensation and in accordance with DEFENDANT’s strict policy and practice. To
24 date, DEFENDANT has not fully paid PLAINTIFF the minimum wage and overtime
25 compensation still owed to his or any penalty wages owed to them under Cal. Lab. Code
26 § 203.

1 19. PLAINTIFF was hired by DEFENDANT with an hourly pay and worked
2 on average 40 hours per week. PLAINTIFF was an excellent and dedicated employee
3 until his wrongful termination on May 18, 2022.

4 20. Importantly, DEFENDANT had a practice of imposing disciplinary action
5 on PLAINTIFF's protected time off from work. Each time PLAINTIFF needed to be out,
6 he provided valid reasons and/or documentation, had the leave approved, and then got
7 written up for taking the approved leave.

8 21. As a full-time employee, PLAINTIFF was entitled to 80 hours of sick time
9 to use for COVID-19 related leave. On information and belief, DEFENDANT similarly
10 incorrectly deducted or assigned sick and vacation time of all CLASS MEMBERS and
11 Aggrieved Employees.

12 22. On May 18, 2022, PLAINTIFF was terminated for taking lawful time off.

13 **JURISDICTION AND VENUE**

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

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

24 **THE CALIFORNIA CLASS**

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

1 Defendant and/or Defendant in California and classified as non-exempt employees (the
2 “CALIFORNIA CLASS”) at any time between March 15, 2018 and the date as
3 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
4 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
5 million dollars (\$5,000,000.00).

6 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
7 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
8 accordingly.

9 27. The CALIFORNIA CLASS is so numerous that joinder of all
10 CALIFORNIA CLASS Members is impracticable.

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

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

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

- 1 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
2 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
3 company policies, practices and procedures that failed to pay all wages due
4 the CALIFORNIA CLASS for all minimum wages and overtime worked.
- 5 b. Committing an act of unfair competition in violation of the California Unfair
6 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
7 provide mandatory meal and/or rest breaks to PLAINTIFF and the
8 CALIFORNIA CLASS members;
- 9 c. Committing an act of unfair competition in violation of the California Unfair
10 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating
11 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
12 CALIFORNIA CLASS Members with necessary expenses incurred in the
13 discharge of their job duties.

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

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

1 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
2 systematically under pays overtime compensation to the CALIFORNIA
3 CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members of
5 the CALIFORNIA CLASS were and are similarly or identically harmed by
6 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
7 engaged in by DEFENDANT; and

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

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

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

1 adjudication or substantially impair or impede their ability to protect
2 their interests.

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

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

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

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

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

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

- 25 a. The questions of law and fact common to the CALIFORNIA CLASS
- 26 predominate over any question affecting only individual CALIFORNIA
- 27 CLASS Members because the DEFENDANT's employment practices are
- 28

1 uniform and systematically applied with respect to the CALIFORNIA
2 CLASS.

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

- 1 i. Class treatment provides manageable judicial treatment calculated to bring
2 an efficient and rapid conclusion to all litigation of all wage and hour related
3 claims arising out of the conduct of DEFENDANT as to the members of the
4 CALIFORNIA CLASS.

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

11 **THE CALIFORNIA LABOR SUB-CLASS**

12 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
13 Eighth and Ninth Causes of Action on behalf of a California sub-class, defined as all
14 members of the CALIFORNIA CLASS classified as non-exempt employees (the
15 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning 4 years
16 before the filing of the complaint and ending on the date as determined by the Court (the
17 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. §
18 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
19 CLASS Members is under five million dollars (\$5,000,000.00).

20 36. DEFENDANT, as a matter of company policy, practice and procedure, and
21 in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
22 Order requirements, and the applicable provisions of California law, intentionally,
23 knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly
24 pay for all time worked by PLAINTIFF and the other members of the CALIFORNIA
25 LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work,
26 required employees to perform this work and permitted or suffered to permit this overtime
27 work. DEFENDANT have uniformly denied these CALIFORNIA LABOR SUB-CLASS
28 Members minimum and overtime wages at the correct amount to which these employees

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

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

11 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
12 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

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

- e. Whether DEFENDANT have engaged in unfair competition by the above-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.

40. 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.

41. 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 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 f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
11 the CALIFORNIA LABOR SUB-CLASS members with necessary
12 expenses incurred in the discharge of their job duties.
- 13 g. Violating Cal. Lab. Code §§233 and 234 by denying PLAINTIFF the right
14 to use sick leave and terminating PLAINTIFF for using sick leave he was
15 entitled to.

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

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

1 a non-exempt employee paid on an hourly basis and paid additional non-
2 discretionary incentive wages who was subjected to the DEFENDANT's
3 practice and policy which failed to pay the correct rate of overtime wages
4 due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked.
5 PLAINTIFF sustained economic injury as a result of DEFENDANT's
6 employment practices. PLAINTIFF and the members of the CALIFORNIA
7 LABOR SUB-CLASS were and are similarly or identically harmed by the
8 same unlawful, deceptive, unfair and pervasive pattern of misconduct
9 engaged in by DEFENDANT; and

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

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

- 21 a. Without class certification and determination of declaratory, injunctive,
22 statutory and other legal questions within the class format, prosecution of
23 separate actions by individual members of the CALIFORNIA LABOR SUB-
24 CLASS will create the risk of:
- 25 i. Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA LABOR SUB-CLASS which would
27 establish incompatible standards of conduct for the parties opposing
28 the CALIFORNIA LABOR SUB-CLASS; or

1 ii. Adjudication with respect to individual members of the
2 CALIFORNIA LABOR SUB-CLASS which would as a practical
3 matter be dispositive of interests of the other members not party to
4 the adjudication or substantially impair or impede their ability to
5 protect their interests.

6 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
7 or refused to act on grounds generally applicable to the CALIFORNIA
8 LABOR SUB-CLASS, making appropriate class-wide relief with respect to
9 the CALIFORNIA LABOR SUB-CLASS as a whole in that
10 DEFENDANTS uniformly failed to pay all wages due, including the correct
11 overtime rate, for all overtime worked by the members of the CALIFORNIA
12 LABOR SUB-CLASS as required by law;

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

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

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

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,
 2. Adjudications with respect to individual members of the 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;
- iii. 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,
 - iv. 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.
44. 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

1 substantial number of individual CALIFORNIA LABOR SUB-CLASS
2 Members will avoid asserting their rights individually out of fear of
3 retaliation or adverse impact on their employment;

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

7 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,
8 will not be able to obtain effective and economic legal redress unless the
9 action is maintained as a Class Action;

10 e. There is a community of interest in obtaining appropriate legal and equitable
11 relief for the acts of unfair competition, statutory violations and other
12 improprieties, and in obtaining adequate compensation for the damages and
13 injuries which DEFENDANT's actions have inflicted upon the
14 CALIFORNIA LABOR SUB-CLASS;

15 f. There is a community of interest in ensuring that the combined assets of
16 DEFENDANT are sufficient to adequately compensate the members of the
17 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

18 g. DEFENDANT have acted or refused to act on grounds generally applicable
19 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
20 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
21 CLASS as a whole;

22 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
23 ascertainable from the business records of DEFENDANT. The
24 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
25 CLASS Members classified as non-exempt employees during the
26 CALIFORNIA LABOR SUB-CLASS PERIOD; and

27 i. Class treatment provides manageable judicial treatment calculated to bring
28 an efficient and rapid conclusion to all litigation of all wage and hour related

1 claims arising out of the conduct of DEFENDANTS as to the members of
2 the CALIFORNIA LABOR SUB-CLASS.

3 **FIRST CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

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

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

7 45. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
8 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
9 this Complaint.

10 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. And
11 Prof. Code § 17021.

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

16 Any person who engages, has engaged, or proposes to engage in unfair competition
17 may be enjoined in any court of competent jurisdiction. The court may make such
18 orders or judgments, including the appointment of a receiver, as may be necessary
19 to prevent the use or employment by any person of any practice which constitutes
20 unfair competition, as defined in this chapter, or as may be necessary to restore to
21 any person in interest any money or property, real or personal, which may have
22 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
23 17203).

24 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
25 engage in a business practice which violates California law, including but not limited to,
26 the applicable Wage Order(s), the California Code of Regulations and the California Labor
27 Code including Sections 201, 202, 203, 204, 226(a), 210, 226.7, 510, 512, 558, 1194, 1197
28 & 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable
relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and

1 remedy the conduct held to constitute unfair competition, including restitution of wages
2 wrongfully withheld.

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

9 50. By the conduct alleged herein, DEFENDANT's practices were deceptive
10 and fraudulent in that DEFENDANT's uniform policy and practice failed to pay
11 PLAINTIFF, and other members of the CALIFORNIA CLASS, minimum wages, wages
12 due for overtime worked, and failed to provide the required amount of overtime
13 compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
14 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which
15 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
16 § 17203, including restitution of wages wrongfully withheld.

17 51. By the conduct alleged herein, DEFENDANT's practices were also
18 unlawful, unfair and deceptive in that DEFENDANT's employment practices caused
19 PLAINTIFF and the other members of the CALIFORNIA CLASS to be underpaid during
20 their employment with DEFENDANT.

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

25 53. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-
27 duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
28

1 hour of pay for each workday in which a second off-duty meal period was not timely
2 provided for each ten (10) hours of work.

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

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

13 56. All the acts described herein as violations of, among other things, the
14 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
15 California Labor Code, were unlawful and in violation of public policy, were immoral,
16 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
17 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200,
18 *et seq.*

19 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are
20 entitled to, and do, seek such relief as may be necessary to restore to them the money and
21 property which DEFENDANT has acquired, or of which PLAINTIFF and the other
22 members of the CALIFORNIA CLASS have been deprived, by means of the above
23 described unlawful and unfair business practices, including earned but unpaid wages for
24 all overtime worked.

25 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are
26 further entitled to, and do, seek a declaration that the described business practices are
27 unlawful, unfair and deceptive, and that injunctive relief should be issued restraining
28 DEFENDANT from engaging in any unlawful and unfair business practices in the future.

1 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
2 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
3 practices of DEFENDANT. Further, the practices herein alleged presently continue to
4 occur unabated. As a result of the unlawful and unfair business practices described herein,
5 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
6 continue to suffer irreparable legal and economic harm unless DEFENDANT are
7 restrained from continuing to engage in these unlawful and unfair business practices.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**
10 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**
11 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**
12 **ALL Defendants)**

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

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

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

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

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

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

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

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

17 68. As a direct result of DEFENDANT's unlawful wage practices as alleged
18 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
19 did not receive the correct reporting time pay and minimum wage compensation for their
20 time worked for DEFENDANT.

21 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
22 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
23 worked than they were entitled to, constituting a failure to pay all earned wages.
24 DEFENDANT fails to accurately pay the PLAINTIFF and members of the CALIFORNIA
25 LABOR SUB-CLASS the wages for the time they work in accordance with 1197 &
26 1197.1, even though the PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in fact
28 work, off the clock time as to which DEFENDANT fails to accurately record and pay as
evidence by DEFENDANT's business records and witnessed by employees.

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

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

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

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

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

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

(Cal. Lab. Code §§ 204, 510, 1194 and 1198)

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

75. 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.

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

77. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and 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
2 be employed more than eight (8) hours per workday and/or more than forty (40) hours per
3 workweek unless they receive additional compensation beyond their regular wages in
4 amount specified by law.

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

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

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

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

28 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
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 84. As a direct result of DEFENDANT'S unlawful wage practices as alleged
4 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
5 did not receive full compensation for all overtime worked.

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

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

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

26 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
27 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28 CLASS for the true time they worked, PLAINTIFF and the other members of the
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 89. DEFENDANT knew or should have known that PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their
5 overtime worked. DEFENDANT 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 applicable overtime rate.

10 90. In performing the acts and practices herein alleged in violation of California
11 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
12 CLASS for all time worked and provide them with the requisite overtime 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 a 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 91. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS therefore request recovery of all unpaid wages, including overtime wages,
21 according to proof, interest, statutory costs, as well as the assessment of any statutory
22 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or
23 other applicable statutes. To the extent overtime 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 be entitled to waiting time penalties under Cal. Lab.
27 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
28 SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,

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

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

5 **(Cal. Lab. Code §§ 226.7 & 512)**

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

8 92. 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 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
12 provide all the legally required off-duty meal breaks to PLAINTIFF and the other
13 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
14 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
15 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved
16 of all of their duties for the legally required off-duty meal periods. As a result of their
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
18 Members were often not fully relieved of duty by DEFENDANT for their meal periods.
19 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
20 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
21 hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF
22 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
23 breaks without additional compensation and in accordance with DEFENDANT's strict
24 corporate policy and practice.

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

95. 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.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

96. 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.

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

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

99. 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

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code § 226)

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

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

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

- a. Gross wages earned;
- b. 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;
- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. 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;

1 h. The name and address of the legal entity that is the employer; and

2 i. All applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 102. When PLAINTIFF and other CALIFORNIA CLASS Members were not
5 paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed
6 to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
7 complete and accurate wage statements which failed to show, among other things, the
8 correct gross and net wages earned, including, work performed in excess of eight (8) hours
9 in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
10 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
11 furnish each of his or her employees with an accurate itemized wage statement in writing
12 showing, among other things, gross wages earned and all applicable hourly rates in effect
13 during the pay period and the corresponding amount of time worked at each hourly rate.
14 Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
15 itemized wage statement that lists all the requirements under California Labor Code 226
16 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
17 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
18 Code § 226.

19 103. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to,
22 costs expended calculating the time worked and the amount of employment taxes which
23 were not properly paid to state and federal tax authorities. These damages are difficult to
24 estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
25 SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
26 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for
27 each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount
28 according to proof at the time of trial (but in no event more than four thousand dollars

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

3 **SEVENTH CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §2802)**

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

8 104. 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 prior
10 paragraphs of this Complaint.

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

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

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

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

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

8 **EIGHTH CAUSE OF ACTION**
9 **FAILURE TO PAY WAGES WHEN DUE**
10 **(Cal. Lab. Code §§201, 202, 203)**
11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
12 **all Defendants)**

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

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

16 As used in this article:

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

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

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

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

26 If an employee not having a written contract for a definite period quits his or
27 her employment, his or her wages shall become due and payable not later
28 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

1 provision of law, an employee who quits without providing a 72-hour notice
2 shall be entitled to receive payment by mail if he or she so requests and
3 designates a mailing address. The date of the mailing shall constitute the date
4 of payment for purposes of the requirement to provide payment within 72
5 hours of the notice of quitting.

6 112. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
7 SUB-CLASS Members' employment contract.

8 113. Cal. Lab. Code § 203 provides:

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

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

18 115. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
19 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has,
20 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at
21 time of termination for all employees who terminated employment during the
22 CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment
23 of all wages due, plus interest and statutory costs as allowed by law.

24 **NINTH CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 233 AND 234** 26 **(Alleged by PLAINTIFF against all Defendants)**

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

117. Pursuant to California Labor Code section 233(c)an employer shall not deny
an employee the right to use sick leave or discharge, threaten to discharge, demote,
suspend, or in any manner discriminate against an employee for using, or attempting to

1 exercise the right to use, sick leave to attend to an illness or the preventative care of a
2 family member, or for any other reason specified in subdivision (a) of Section 246.5.

3 118. Pursuant to Cal. Labor Code Section 234, an employer absence control
4 policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to
5 or result in discipline, discharge, demotion, or suspension is a per se violation of Section
6 233. An employee working under this policy is entitled to appropriate legal and equitable
7 relief pursuant to Section 233. As alleged above, Plaintiff was discharged by Defendants,
8 in part, for taking sick leave for attending to his own illness. On information and belief,
9 Defendants similarly denied, discharged, threatened to discharge, demoted, suspended, or
10 in another manner discriminated against all aggrieved employees, for using, or attempting
11 to exercise the right to use, sick leave to attend to an illness or the preventive care of a
12 family member etc. Additionally, as alleged, Defendants also followed an absence control
13 practice towards Plaintiff and all aggrieved employees in violation of Cal. Labor code
14 Section 234.

15 119. As a result of the aforesaid violations Plaintiff will seek damages statutory
16 penalties, civil penalties pursuant to Cal. Labor Code 2699(a) and (f) against Defendants
17 on behalf of himself and all aggrieved employees for violation of Cal. Labor Code §§ 233
18 and 234 in addition to actual damages, reinstatement, interest, and an award of attorney's
19 fees and costs.

20 ///

21 **TENTH CAUSE OF ACTION**
22 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**
23 **[Cal. Lab. Code §§ 2698 et seq.]**
(Alleged by PLAINTIFF against all Defendants)

24 120. PLAINTIFF realleges and incorporate by this reference, as though fully set
25 forth herein, the prior paragraphs of this Complaint.

26 121. The Private Attorney General Act ("PAGA") is a mechanism by which the
27 State of California itself can enforce state labor laws through the employee suing under
28 the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies.

1 An action to recover civil penalties under PAGA is fundamentally a law enforcement
2 action designed to protect the public and not to benefit private parties. The purpose of
3 the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
4 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the
5 California Legislature specified that "it was ... in the public interest to allow aggrieved
6 employees, acting as private attorneys general to recover civil penalties for Labor Code
7 violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to
8 arbitration.

9 122. PLAINTIFF, and such persons that may be added from time to time who
10 satisfy the requirements and exhaust the administrative procedures under the Private
11 Attorney General Act, bring this Representative Action on behalf of the State of California
12 with respect to himself and all individuals who are or previously were employed by
13 DEFENDANT in California during the time period of August 3, 2021 until the present (the
14 "AGGRIEVED EMPLOYEES").

15 123. On August 3, 2022, PLAINTIFF, via counsel, sent the statutorily required
16 notice to the Labor and Workforce Development Agency (the "Agency").

17 124. On August 3, 2022, PLAINTIFF, via counsel, also sent a copy of the August
18 3, 2022 notice to DEFENDANT's attorney of the specific provisions of this code alleged
19 to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
20 hereto and incorporated by this reference herein. The statutory waiting period for
21 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant
22 to Section 2699.3, PLAINTIFF may now commence a representative civil action under
23 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
24 AGGRIEVED EMPLOYEES as herein defined. Therefore, PLAINTIFF has exhausted the
25 administrative requirements as required under PAGA.

26 125. The policies, acts and practices heretofore described were and are an
27 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
28 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and

1 rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
2 pay wages, (e) failed to pay earned wages in violation of the applicable Labor Code
3 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201,
4 202, 203, 204 *et seq.*, 226(a), 226.2, 226.3, 226.7, 227.3, 232, 233, 234, 246 *et seq.*, 510,
5 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and the applicable Industrial
6 Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
7 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
8 Private Attorney General Act of 2004 as the representative of the State of California for
9 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES.

11 126. Some or all of the conduct and violations alleged herein occurred during the
12 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did
13 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
14 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
15 *Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
16 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
17 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
18 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
added, reh'g denied (June 13, 2018).)

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a 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 wages and overtime compensation and unreimbursed expenses 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. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

- d. Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
 - e. 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 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code §226; and
 - f. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code §203.
 - g. Penalties pursuant to Cal. Lab. Code §1198.5.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004 and other applicable laws; and
 - b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
 - c. An award of reasonable attorneys' fees, costs and filing fees paid to the LWDA pursuant to California Labor Code § 2699(g) and/or other applicable law;
 - d. An award of reasonable attorneys' fees and costs pursuant to California Labor Code § 226, 248.5, and/or other applicable law;
 - e. Pre-judgment interest as provided by law;
4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and

- 1 c. An award of penalties, attorneys' fees and costs of suit, as allowable under
2 the law, including, but not limited to, pursuant to Labor Code §218.5, §226,
3 §1194 and/or §2802.
4 5. Damages, statutory penalties and/or interest pursuant to Cal. Labor Code
5 §§ 203, 226, 233, 234, 245, 246.6, 1102.5 and 1198.5.
6 6. For general damages, according to proof, including in the amount of all
7 unpaid and wrongfully withheld wages, including premium wages;
8 7. For such other and further relief as the Court deems just and proper.
9

10 Dated: October 20, 2022

BARVIÉ LAW, APC

11
12 By: 

13 _____
14 NICOLE BARVIÉ
15 Attorneys for Plaintiff(s)
16
17

18 **DEMAND FOR A JURY TRIAL**

19 PLAINTIFF demands a jury trial on issues triable to a jury.
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21 Dated: October 20, 2022

BARVIÉ LAW, APC

22
23 By: 

24 _____
25 NICOLE BARVIÉ
26 Attorneys for Plaintiff(s)
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EXHIBIT 1

August 3, 2022

**VIA ONLINE FILING TO LWDA and ELECTRONIC MAIL & CERTIFIED
MAIL TO EMPLOYER**

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i>	The Toro Company: Jeremy Robb, Esq. Senior Attorney, Commercial & Employment, Jeremy.Robb@toro.com Attorney for: The Toro Company <i>Via Electronic Mail</i> The Toro Company 8111 Lyndale Avenue South Bloomington, Minnesota 55420 <i>Via Certified Mail</i>
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Re: **Notice of Violation of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 226, 226(a), 226.2, 226.3, 226.7, 227.3, 232, 233, 234, 246 et seq., 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 2802, Violations of Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.5**

Dear Mr. Robb,

Our office represents Plaintiff Jvonn Gonzalez (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against The Toro Company, a Delaware Corporation (herein referred as “Defendant”).

“Aggrieved Employees” refers to all individuals who are or were previously employed by Defendant The Toro Company in California and classified as non-exempt employees during the time period of July 25, 2021 until a date as determined by the Court. Plaintiff has been employed by Defendant in California beginning September 20, 2021 to on or about May 18, 2022 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as overtime wages, reimbursement, and accurate wage statements. Defendant also failed to pay Plaintiff and other aggrieved employees’ minimum wages and overtime and meal and rest break premiums. Defendant also failed to reimburse Plaintiff and other aggrieved employees for business-related expenses. Further, failure to compensate Plaintiff and other Aggrieved





Employees for all time worked, including but not limited to donning and doffing personal protective equipment (“PPE”). Defendant also failed to correctly calculate Plaintiff’s regular rate of pay for purposes of payment of overtime and sick time pay. Further, Defendant unlawfully failed to timely pay Plaintiff and other Aggrieved Employees for earned wages. Additionally, Plaintiff and other Aggrieved Employees used their personal cellular phones to execute their job duties, Defendant failed to reimburse Plaintiff and other Aggrieved Employees for the costs related to the use of their personal cellular phones to execute their job duties and for purchase of their personal protective equipment. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates §§ 201, 202, 203, 204 *et seq.*, 226(a), 226.2, 226.3, 226.7, 227.3, 232, 233, 234, 246 *et seq.*, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, Violations of Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.5

Plaintiff seeks to represent a group of Aggrieved Employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period. A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved California Employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the below number and address.

Respectfully,

Nicole Barvié
Attorney for Plaintiff

1 **BARVIÉ LAW, APC**
2 NICOLE BARVIÉ, State Bar No. 282352
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 JVONN GONZALEZ, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

13 Plaintiffs,

14 v.

15 THE TORO COMPANY, a Delaware
16 Corporation; and DOES 1-50, Inclusive,

17 Defendant(s).

Case No.

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;
- 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) VIOLATION OF LABOR CODE §233 and §234; and

[Additional Causes of Action continued on next page]

10) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT
PURSUANT TO LABOR CODE
SECTIONS 2698, et seq.;

DEMAND FOR JURY TRIAL

Plaintiff JVONN GONZALEZ (“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

1. Defendant THE TORO COMPANY (“DEFENDANT” or “DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

2. DEFENDANT is a gardening product seller and lawn mower manufacturer.

3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, accurate wage statements, overtime pay and meal and rest periods from September 20, 2021 to May 18, 2022. 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. DEFENDANT as a non-exempt employee is also entitled to accurate itemized wage statements.

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 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time between during the period beginning four (4) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA

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

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

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

25 7. The agents, servants and/or employees of the Defendant and each of them
26 acting on behalf of the Defendants acted within the course and scope of his, her or its
27 authority as the agent, servant and/or employee of the Defendants, and personally
28 participated in the conduct alleged herein on behalf of the Defendants with respect to the

1 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable
2 to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF
3 and the other members of the CALIFORNIA CLASS, for the loss sustained as a
4 proximate result of the conduct of the Defendants' agents, servants and/or employees.

5 THE CONDUCT

6 8. Pursuant to the Industrial Welfare Commission Wage Orders,
7 DEFENDANT is required to pay PLAINTIFF and the CALIFORNIA CLASS Members
8 for all their time worked, meaning the time during which an employee is subject to the
9 control of an employer, including all the time the employee is suffered or permitted to
10 work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA
11 CLASS Members to work without paying them for all the time they were under
12 DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work
13 while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break, as
14 well as before his shift started and after his shift ended. DEFENDANT required
15 PLAINTIFF and the CALIFORNIA CLASS Members to work off the clock without
16 paying them for all the time they performed duties while on their meal break, specifically
17 by failing to provide enough labor hours to accomplish all the job tasks that
18 DEFENDANT expected PLAINTIFF and the CALIFORNIA CLASS Members to
19 complete on a daily and/or weekly basis. From time to time, PLAINTIFF was also often
20 interrupted by work assignments during his breaks. Indeed there were many days where
21 PLAINTIFF did not even receive a partial meal break. PLAINTIFF and other
22 CALIFORNIA CLASS Members are not paid for their work time putting on their work
23 gear because they are not paid until they are ready to work prior to their shift.
24 DEFENDANT failed to pay PLAINTIFF and CALIFORNIA CLASS Members for this
25 donning and doffing time on the mandatory protective gear. Additionally, from time to
26 time, DEFENDANT engages in the practice of requiring PLAINTIFF and
27 CALIFORNIA CLASS Members to perform work off the clock that DEFENDANT, as a
28 condition of employment, requires these employees to wait in line and submit to

1 mandatory temperature check for COVID-19 screening prior to clocking into
2 DEFENDANT’S timekeeping system for the workday. Additionally, prior to clocking in
3 for a shift, PLAINTIFF and other CALIFORNIA CLASS Members are required to put
4 on their work uniforms and protective gear, including but not limited to, oil resistant sole
5 shoes, uniform, safety glasses, safety gloves, facial covering mask, and ear plugs.
6 Finally, PLAINTIFF and other members of the CALIFORNIA CLASS from time to time
7 were not paid wages for all the time worked, including overtime wages, such that in the
8 aggregate employees were underpaid wages as a result of DEFENDANT’S pattern and
9 practice of unevenly rounding time worked by its employees. DEFENDANTS also
10 underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS
11 MEMBERS by failing to pay such wages at the regular rate of pay. Specifically,
12 PLAINTIFF and other non-exempt employees regularly earn non-discretionary
13 remuneration, including but not limited to, incentives, shift differential pay and bonuses.
14 Rather, than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
15 PLAINTIFF and other CALIFORNIA CLASS MEMBERS at their base rates of pay. As
16 a result, PLAINTIFF and other California CLASS Members forfeit minimum wage,
17 overtime wage compensation, and off-duty meal breaks by working without their time
18 being correctly recorded and without compensation at the applicable rates. As a result,
19 the PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited
20 minimum wage and overtime compensation by working without their time being
21 accurately recorded and without compensation at the applicable minimum wage and
22 overtime rates. DEFENDANT’S uniform policy and practice not to pay PLAINTIFF and
23 other CALIFORNIA CLASS Members for all time worked is evidenced by
24 DEFENDANT’S business records.

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

1 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have
2 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
3 other CALIFORNIA CLASS Members for the actual time these employees worked each
4 day, including overtime hours. As a result DEFENDANT was able to and did in fact
5 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping
6 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
7 paying these employees the applicable overtime compensation for overtime worked and
8 to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
9 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by
10 working without their time being accurately recorded and without compensation at the
11 applicable overtime rates.

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

20 12. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were also from time to time unable to take off duty
22 meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
23 CALIFORNIA CLASS Members were required to perform work as ordered by
24 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
25 meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA
26 CLASS Members with a second off-duty meal period each workday in which these
27 employees were required by DEFENDANT to work ten (10) hours of work. From time to
28 time, when a meal break was provided, PLAINTIFF was required to remain on

1 DEFENDANT's premises, on-call and on-duty, and was interrupted with work.
2 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
3 breaks without additional compensation and in accordance with DEFENDANT's strict
4 corporate policy and practice

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

1 14. When PLAINTIFF and other CALIFORNIA CLASS Members were not
2 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANT also
3 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
4 complete and accurate wage statements which failed to show, among other things, the
5 time worked, including, work performed in excess of eight (8) hours in a workday and/or
6 forty (40) hours in any workweek, and the correct penalty payments or missed meal and
7 rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his
8 or her employees with an accurate itemized wage statement in writing showing, among
9 other things, gross wages earned and all applicable hourly rates in effect during the pay
10 period and the corresponding amount of time worked at each hourly rate. Aside, from the
11 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
12 itemized wage statement that lists all the requirements under California Labor Code 226
13 *et seq.*, As a result, from time to time DEFENDANT provided PLAINTIFF and the other
14 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
15 Code § 226.

16 15. 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 the correct time and overtime for the time worked by
21 PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
22 employees’ time is the DEFENDANT’s burden. As a result of DEFENDANT’s
23 intentional disregard of the obligation to meet this burden, DEFENDANT failed to
24 properly calculate and/or pay all required compensation for work performed by the
25 members of the CALIFORNIA CLASS and violated the California Labor Code and
26 regulations promulgated thereunder as herein alleged.

27 16. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission (“IWC”) Wage Order,

1 DEFENDANT as a matter of company policy, practice and procedure, intentionally and
2 knowingly failed to compensate PLAINTIFF and the other members of the
3 CALIFORNIA CLASS for missed meal and rest periods. This uniform policy and
4 practice of DEFENDANT is intended to purposefully avoid the payment for all time
5 worked as required by California law which allows DEFENDANT to illegally profit and
6 gain an unfair advantage over competitors who complied with the law. To the extent
7 equitable tolling operates to toll claims by the CALIFORNIA CLASS against
8 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

20 18. Specifically as to PLAINTIFF’s pay, PLAINTIFF was from time to time
21 unable to take off duty meal and rest breaks and was not fully relieved of duty for his
22 meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT
23 for more than five (5) hours during a shift without receiving an off-duty meal break.
24 Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
25 each workday in which he was required by DEFENDANT to work ten (10) hours of
26 work. PLAINTIFF therefore forfeited meal and rest breaks without additional
27 compensation and in accordance with DEFENDANT’s strict policy and practice. To
28 date, DEFENDANT has not fully paid PLAINTIFF the minimum wage and overtime

1 compensation still owed to him or any penalty wages owed to them under Cal. Lab. Code
2 § 203.

3 19. PLAINTIFF was hired by DEFENDANT with an hourly pay and worked
4 on average 40 hours per week. PLAINTIFF was an excellent and dedicated employee
5 until his wrongful termination on May 18, 2022.

6 20. Importantly, DEFENDANT had a practice of imposing disciplinary action
7 on PLAINTIFF's protected time off from work. Each time PLAINTIFF needed to be out,
8 he provided valid reasons and/or documentation, had the leave approved, and then got
9 written up for taking the approved leave.

10 21. As a full-time employee, PLAINTIFF was entitled to 80 hours of sick time
11 to use for COVID-19 related leave. On information and belief, DEFENDANT similarly
12 incorrectly deducted or assigned sick and vacation time of all CLASS MEMBERS and
13 Aggrieved Employees.

14 22. On May 18, 2022, PLAINTIFF was terminated for taking lawful time off.

15 **JURISDICTION AND VENUE**

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

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

26 **THE CALIFORNIA CLASS**

27 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
28 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the

1 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
2 California class, defined as all individuals who are or previously were employed by
3 Defendant and/or Defendant in California and classified as non-exempt employees (the
4 "CALIFORNIA CLASS") at any time between March 15, 2018 and the date as
5 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
6 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
7 million dollars (\$5,000,000.00).

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

11 27. The CALIFORNIA CLASS is so numerous that joinder of all
12 CALIFORNIA CLASS Members is impracticable.

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

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

1 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
2 under California law by:

- 3 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
4 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
5 company policies, practices and procedures that failed to pay all wages due
6 the CALIFORNIA CLASS for all minimum wages and overtime worked.
7 b. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
9 provide mandatory meal and/or rest breaks to PLAINTIFF and the
10 CALIFORNIA CLASS members;
11 c. Committing an act of unfair competition in violation of the California Unfair
12 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating
13 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
14 CALIFORNIA CLASS Members with necessary expenses incurred in the
15 discharge of their job duties.

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

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

1 wages who was subjected to the DEFENDANT's practice and policy which
2 failed to pay the correct rate of overtime wages due to the CALIFORNIA
3 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
4 systematically under pays overtime compensation to the CALIFORNIA
5 CLASS. PLAINTIFF sustained economic injury as a result of
6 DEFENDANT's employment practices. PLAINTIFF and the members of
7 the CALIFORNIA CLASS were and are similarly or identically harmed by
8 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
9 engaged in by DEFENDANT; and

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

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

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

- 24 i. Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA CLASS which would establish
26 incompatible standards of conduct for the parties opposing the
27 CALIFORNIA CLASS; and/or;
28

1 ii. Adjudication with respect to individual members of the
2 CALIFORNIA CLASS which would as a practical matter be
3 dispositive of interests of the other members not party to the
4 adjudication or substantially impair or impede their ability to protect
5 their interests.

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

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

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

25 i. The interests of the members of the CALIFORNIA CLASS in
26 individually controlling the prosecution or defense of separate actions
27 in that the substantial expense of individual actions will be avoided
28 to recover the relatively small amount of economic losses sustained

1 by the individual CALIFORNIA CLASS Members when compared
2 to the substantial expense and burden of individual prosecution of this
3 litigation;

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

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

10 2. Adjudications with respect to individual members of the
11 CALIFORNIA CLASS would as a practical matter be
12 dispositive of the interests of the other members not parties to
13 the adjudication or substantially impair or impede their ability
14 to protect their interests;

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

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

26 33. The Court should permit this action to be maintained as a Class Action
27 pursuant to Cal. Code of Civ. Proc. § 382 because:
28

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;

1 h. The members of the CALIFORNIA CLASS are readily ascertainable from
2 the business records of DEFENDANT; and

3 i. Class treatment provides manageable judicial treatment calculated to bring
4 an efficient and rapid conclusion to all litigation of all wage and hour related
5 claims arising out of the conduct of DEFENDANT as to the members of the
6 CALIFORNIA CLASS.

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

13 **THE CALIFORNIA LABOR SUB-CLASS**

14 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
15 Eighth and Ninth Causes of Action on behalf of a California sub-class, defined as all
16 members of the CALIFORNIA CLASS classified as non-exempt employees (the
17 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning 4 years
18 before the filing of the complaint and ending on the date as determined by the Court (the
19 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. §
20 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
21 CLASS Members is under five million dollars (\$5,000,000.00).

22 36. DEFENDANT, as a matter of company policy, practice and procedure, and
23 in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
24 Order requirements, and the applicable provisions of California law, intentionally,
25 knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly
26 pay for all time worked by PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work,
28 required employees to perform this work and permitted or suffered to permit this overtime

1 work. DEFENDANT have uniformly denied these CALIFORNIA LABOR SUB-CLASS
2 Members minimum and overtime wages at the correct amount to which these employees
3 are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent
4 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
5 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
6 adjusted accordingly.

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

13 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
14 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 17 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
18 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
19 violation of the California Labor Code and California regulations and the
20 applicable California Wage Order;
- 21 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
22 entitled to overtime compensation for overtime worked under the overtime
23 pay requirements of California law;
- 24 c. Whether DEFENDANT failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS with legally required
26 uninterrupted thirty (30) minute meal breaks and rest periods;

- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- e. Whether DEFENDANT have engaged in unfair competition by the above-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.

40. 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.

41. 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 for which DEFENDANT are liable pursuant to Cal. Lab. Code § 1194 & § 1198;

- 1 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
2 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
3 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
4 the legally required rest breaks;
- 5 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
6 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
7 itemized statement in writing showing time worked at by the employee;
- 8 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
9 an employee is discharged or quits from employment, the employer must
10 pay the employee all wages due without abatement, by failing to tender full
11 payment and/or restitution of wages owed or in the manner required by
12 California law to the members of the CALIFORNIA LABOR SUB-CLASS
13 who have terminated their employment.
- 14 f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
15 the CALIFORNIA LABOR SUB-CLASS members with necessary
16 expenses incurred in the discharge of their job duties.
- 17 g. Violating Cal. Lab. Code §§233 and 234 by denying PLAINTIFF the right
18 to use sick leave and terminating PLAINTIFF for using sick leave he was
19 entitled to.

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

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

3 c. The claims of the representative PLAINTIFF are typical of the claims of
4 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
5 like all the other members of the CALIFORNIA LABORSUB-CLASS, was
6 a non-exempt employee paid on an hourly basis and paid additional non-
7 discretionary incentive wages who was subjected to the DEFENDANT's
8 practice and policy which failed to pay the correct rate of overtime wages
9 due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked.
10 PLAINTIFF sustained economic injury as a result of DEFENDANT's
11 employment practices. PLAINTIFF and the members of the CALIFORNIA
12 LABOR SUB-CLASS were and are similarly or identically harmed by the
13 same unlawful, deceptive, unfair and pervasive pattern of misconduct
14 engaged in by DEFENDANT; and

15 d. The representative PLAINTIFF will fairly and adequately represent and
16 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
17 retained counsel who are competent and experienced in Class Action
18 litigation. There are no material conflicts between the claims of the
19 representative PLAINTIFF and the members of the CALIFORNIA LABOR
20 SUB-CLASS that would make class certification inappropriate. Counsel for
21 the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims
22 of all CALIFORNIA LABOR SUB-CLASS Members.

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

26 a. Without class certification and determination of declaratory, injunctive,
27 statutory and other legal questions within the class format, prosecution of
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1 separate actions by individual members of the CALIFORNIA LABOR SUB-
2 CLASS will create the risk of:

- 3 i. Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which would
5 establish incompatible standards of conduct for the parties opposing
6 the CALIFORNIA LABOR SUB-CLASS; or
- 7 ii. Adjudication with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS which would as a practical
9 matter be dispositive of interests of the other members not party to
10 the adjudication or substantially impair or impede their ability to
11 protect their interests.
- 12 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
13 or refused to act on grounds generally applicable to the CALIFORNIA
14 LABOR SUB-CLASS, making appropriate class-wide relief with respect to
15 the CALIFORNIA LABOR SUB-CLASS as a whole in that
16 DEFENDANTS uniformly failed to pay all wages due, including the correct
17 overtime rate, for all overtime worked by the members of the CALIFORNIA
18 LABOR SUB-CLASS as required by law;
- 19 c. Common questions of law and fact predominate as to the members of the
20 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
21 violations of California Law as listed above, and predominate over any
22 question affecting only individual CALIFORNIA LABOR SUB-CLASS
23 Members, and a Class Action is superior to other available methods for the
24 fair and efficient adjudication of the controversy, including consideration of:
 - 25 i. The interests of the members of the CALIFORNIA LABOR SUB-
26 CLASS in individually controlling the prosecution or defense of
27 separate actions in that the substantial expense of individual actions
28 will be avoided to recover the relatively small amount of economic

1 losses sustained by the individual CALIFORNIA LABOR SUB-
2 CLASS Members when compared to the substantial expense and
3 burden of individual prosecution of this litigation;

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

6 1. Inconsistent or varying adjudications with respect to
7 individual members of the CALIFORNIA LABOR SUB-
8 CLASS, which would establish incompatible standards of
9 conduct for the DEFENDANTS; and/or,

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

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

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

26 44. This Court should permit this action to be maintained as a Class Action
27 pursuant to Cal. Code of Civ. Proc. § 382 because:
28

- 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;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

- 1 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members classified as non-exempt employees during the
5 CALIFORNIA LABOR SUB-CLASS PERIOD; and
6 i. Class treatment provides manageable judicial treatment calculated to bring
7 an efficient and rapid conclusion to all litigation of all wage and hour related
8 claims arising out of the conduct of DEFENDANTS as to the members of
9 the CALIFORNIA LABOR SUB-CLASS.

10 **FIRST CAUSE OF ACTION**

11 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

17 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. And
18 Prof. Code § 17021.

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

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

1 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to,
3 the applicable Wage Order(s), the California Code of Regulations and the California Labor
4 Code including Sections 201, 202, 203, 204, 226(a), 210, 226.7, 510, 512, 558, 1194, 1197
5 & 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable
6 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
7 remedy the conduct held to constitute unfair competition, including restitution of wages
8 wrongfully withheld.

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

15 50. By the conduct alleged herein, DEFENDANT's practices were deceptive
16 and fraudulent in that DEFENDANT's uniform policy and practice failed to pay
17 PLAINTIFF, and other members of the CALIFORNIA CLASS, minimum wages, wages
18 due for overtime worked, and failed to provide the required amount of overtime
19 compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
20 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which
21 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
22 § 17203, including restitution of wages wrongfully withheld.

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

27 52. By the conduct alleged herein, DEFENDANT's practices were also unfair
28 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to

1 provide all legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
2 CLASS members as required by Cal. Lab. Code §§226.7 and 512.

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

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

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

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

24 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are
25 entitled to, and do, seek such relief as may be necessary to restore to them the money and
26 property which DEFENDANT has acquired, or of which PLAINTIFF and the other
27 members of the CALIFORNIA CLASS have been deprived, by means of the above
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1 described unlawful and unfair business practices, including earned but unpaid wages for
2 all overtime worked.

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**
16 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

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

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

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

27 62. 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 63. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
2 the commission is the minimum wage to be paid to employees, and the payment of a wage
3 less than the minimum so fixed is unlawful.

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

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

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

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

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

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

1 DEFENDANT fails to accurately pay the PLAINTIFF and members of the CALIFORNIA
2 LABOR SUB-CLASS the wages for the time they work in accordance with 1197 &
3 1197.1, even though the PLAINTIFF and the other members of the CALIFORNIA
4 LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in fact
5 work, off the clock time as to which DEFENDANT fails to accurately record and pay as
6 evidence by DEFENDANT's business records and witnessed by employees.

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

13 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS for the true time they worked, PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
17 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
20 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
21 time worked. DEFENDANTS systematically elected, either through intentional
22 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
23 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
24 systematic scheme by refusing to pay PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

1 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 with conscious and utter disregard for their legal rights, or the consequences to them, and
3 with the despicable intent of depriving them of their property and legal rights, and
4 otherwise causing them injury in order to increase company profits at the expense of these
5 employees.

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME COMPENSATION** 20 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)** 21 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against** 22 **ALL Defendants)**

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

26 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
28 California Labor Code and the Industrial Welfare Commission requirements for
DEFENDANT's failure to properly compensate the members of the CALIFORNIA

1 LABOR SUB-CLASS for all overtime worked, including, work performed in excess of
2 eight (8) hours in a workday and/or twelve (12) hours in a workday, and/or forty (40) hours
3 in any workweek.

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

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

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

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

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

27 82. In committing these violations of the California Labor Code, DEFENDANT
28 inaccurately records overtime worked and consequently underpays the overtime worked
by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members.

1 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
2 other benefits in violation of the California Labor Code, the Industrial Welfare
3 Commission requirements and other applicable laws and regulations.

4 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
5 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
6 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
7 including overtime work.

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

11 85. Cal. Lab. Code § 515 sets out various categories of employees who are
12 exempt from the overtime requirements of the law. None of these exemptions are
13 applicable to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS. Further PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS are not subject to a valid collective bargaining agreement that would preclude the
16 causes of action contained herein this Complaint. Rather, PLAINTIFF bring this Action
17 on behalf of themselves and the CALIFORNIA LABOR SUB-CLASS based on
18 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State
of California.

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

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

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

9 89. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their
11 overtime worked. DEFENDANT systematically elected, either through intentional
12 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
13 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
14 systematic scheme by refusing to pay PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

25 91. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all unpaid wages, including overtime wages,
27 according to proof, interest, statutory costs, as well as the assessment of any statutory
28 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or
other applicable statutes. To the extent overtime compensation is determined to be owed

1 to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
2 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and
3 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
4 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
5 SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
6 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR
7 SUB-CLASS Members are entitled to seek and recover statutory costs.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

94. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal 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 a meal period was not provided.

95. 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.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

96. 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.

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

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

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

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

12 **(Cal. Lab. Code § 226)**

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

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

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

- 20 a. Gross wages earned;
- 21 b. Total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment
23 of overtime under subdivision (a) of Section 515 or any applicable order of
24 the Industrial Welfare Commission;
- 25 c. The number of piece rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis;
- 27 d. All deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item;
- e. Net wages earned;

- f. The inclusive dates of the period for which the employee is paid;
- g. 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;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

102. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. 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. Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

103. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the time worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to

1 estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
3 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for
4 each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount
5 according to proof at the time of trial (but in no event more than four thousand dollars
6 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR
7 SUB-CLASS herein.

8 **SEVENTH CAUSE OF ACTION**

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

10 **(Cal. Lab. Code §2802)**

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

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

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

17 An employed shall indemnify his or her employee for all necessary
18 expenditures or losses incurred by the employee in direct consequence of the
19 discharge of his or her duties, or of his or her obedience to the directions of
20 the employer, even though unlawful, unless the employee, at the time of
21 obeying the directions, believe them to be unlawful.

22 106. At all relevant times herein, DEFENDANT violated Cal. Lab Code §2802, by
23 failing to indemnify and reimburse PLAINTIFF and the California Labor Sub-Class
24 Members for required expenses incurred in the discharge of their job duties for
25 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
26 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
27 limited to, costs related to their required uniform and using their personal cellular phones on
28 behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use
their personal cellular phones in order to perform work related job tasks. DEFENDANT's
policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-

1 CLASS members for expenses resulting from using their personal cellular phones for
2 DEFENDANT within the course and scope of their employment for DEFENDANT. These
3 expenses were necessary to complete their principal job duties. DEFENDANT is estopped
4 by DEFENDANT's conduct to assert any waiver of this expectation. Although these
5 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR
6 SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
7 the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is
8 required to do under the laws and regulations of California.

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

13 **EIGHTH CAUSE OF ACTION**
14 **FAILURE TO PAY WAGES WHEN DUE**
15 **(Cal. Lab. Code §§201, 202, 203)**
16 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
17 **all Defendants)**

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

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

21 As used in this article:

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

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

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

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

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

12 112. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
13 SUB-CLASS Members’ employment contract.

14 113. Cal. Lab. Code § 203 provides:

15 If an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall
18 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.

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

22 115. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
23 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has,
24 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at
25 time of termination for all employees who terminated employment during the
26 CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment
27 of all wages due, plus interest and statutory costs as allowed by law.
28

1 **NINTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 233 AND 234**
3 **(Alleged by PLAINTIFF against all Defendants)**

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

7 117. Pursuant to California Labor Code section 233(c)an employer shall not deny
8 an employee the right to use sick leave or discharge, threaten to discharge, demote,
9 suspend, or in any manner discriminate against an employee for using, or attempting to
10 exercise the right to use, sick leave to attend to an illness or the preventative care of a
11 family member, or for any other reason specified in subdivision (a) of Section 246.5.

12 118. Pursuant to Cal. Labor Code Section 234, an employer absence control
13 policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to
14 or result in discipline, discharge, demotion, or suspension is a per se violation of Section
15 233. An employee working under this policy is entitled to appropriate legal and equitable
16 relief pursuant to Section 233. As alleged above, Plaintiff was discharged by Defendants,
17 in part, for taking sick leave for attending to his own illness. On information and belief,
18 Defendants similarly denied, discharged, threatened to discharge, demoted, suspended, or
19 in another manner discriminated against all aggrieved employees, for using, or attempting
20 to exercise the right to use, sick leave to attend to an illness or the preventive care of a
21 family member etc. Additionally, as alleged, Defendants also followed an absence control
22 practice towards Plaintiff and all aggrieved employees in violation of Cal. Labor code
23 Section 234.

24 119. As a result of the aforesaid violations Plaintiff will seek damages statutory
25 penalties, civil penalties pursuant to Cal. Labor Code 2699(a) and (f) against Defendants
26 on behalf of himself and all aggrieved employees for violation of Cal. Labor Code §§ 233
27 and 234 in addition to actual damages, reinstatement, interest, and an award of attorney's
28 fees and costs.

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TENTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
[Cal. Lab. Code §§ 2698 et seq.]
(Alleged by PLAINTIFF against all Defendants)

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

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

122. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT in California during the time period of August 3, 2021 until the present (the "AGGRIEVED EMPLOYEES").

123. On August 3, 2022, PLAINTIFF, via counsel, sent the statutorily required notice to the Labor and Workforce Development Agency (the "Agency").

124. On August 3, 2022, PLAINTIFF, via counsel, also sent a copy of the August 3, 2022 notice to DEFENDANT's attorney of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant

1 to Section 2699.3, PLAINTIFF may now commence a representative civil action under
2 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined. Therefore, PLAINTIFF has exhausted the
4 administrative requirements as required under PAGA.

5 125. The policies, acts and practices heretofore described were and are an
6 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
7 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
8 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
9 rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
10 pay wages, (e) failed to pay earned wages in violation of the applicable Labor Code
11 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201,
12 202, 203, 204 *et seq.*, 226(a), 226.2, 226.3, 226.7, 227.3, 232, 233, 234, 246 *et seq.*, 510,
13 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and the applicable Industrial
14 Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
15 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
16 Private Attorney General Act of 2004 as the representative of the State of California for
17 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
18 EMPLOYEES.

19 126. Some or all of the conduct and violations alleged herein occurred during the
20 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did
21 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
22 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
23 *Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
24 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
25 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
26 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
27 added, reh'g denied (June 13, 2018).)

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a 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:

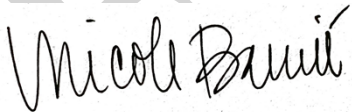
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages and overtime compensation and unreimbursed expenses 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. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

- d. Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
 - e. 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 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code §226; and
 - f. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code §203.
 - g. Penalties pursuant to Cal. Lab. Code §1198.5.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004 and other applicable laws; and
 - b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
 - c. An award of reasonable attorneys' fees, costs and filing fees paid to the LWDA pursuant to California Labor Code § 2699(g) and/or other applicable law;
 - d. An award of reasonable attorneys' fees and costs pursuant to California Labor Code § 226, 248.5, and/or other applicable law;
 - e. Pre-judgment interest as provided by law;
4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and

- 1 c. An award of penalties, attorneys' fees and costs of suit, as allowable under
2 the law, including, but not limited to, pursuant to Labor Code §218.5, §226,
3 §1194 and/or §2802.
4 5. Damages, statutory penalties and/or interest pursuant to Cal. Labor Code
5 §§ 203, 226, 233, 234, 245, 246.6, 1102.5 and 1198.5.
6 6. For general damages, according to proof, including in the amount of all
7 unpaid and wrongfully withheld wages, including premium wages;
8 7. For such other and further relief as the Court deems just and proper.
9

10 Dated: October ____, 2022

11 **BARVIÉ LAW, APC**

12 By: 
13 _____

14 NICOLE BARVIÉ
Attorneys for Plaintiff(s)

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16
17
18 **DEMAND FOR A JURY TRIAL**

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

20 Dated: October ____ 2022

21 **BARVIÉ LAW, APC**

22 By: 
23 _____

24 NICOLE BARVIÉ
Attorneys for Plaintiff(s)

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EXHIBIT 1

1 **BARVIÉ LAW, APC**
2 NICOLE BARVIÉ, State Bar No. 282352

3 nicole@barvielaw.com

4 550 West B Street, 4th Floor

5 San Diego, CA 92101-3598

6 Telephone: 858.255.0928

7 Attorney for Plaintiff JVONN GONZALEZ

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 JVONN GONZALEZ, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

13 Plaintiffs,

14 v.

15 THE TORO COMPANY, a Delaware
16 Corporation; and DOES 1-50, Inclusive,

17 Defendant(s).

Case No.

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;
- 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) VIOLATION OF LABOR CODE §233 and §234; and

[Additional Causes of Action continued on next page]

10) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT
PURSUANT TO LABOR CODE
SECTIONS 2698, et seq.;

DEMAND FOR JURY TRIAL

Plaintiff JVONN GONZALEZ (“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

1. Defendant THE TORO COMPANY (“DEFENDANT” or “DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

2. DEFENDANT is a gardening product seller and lawn mower manufacturer.

3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, accurate wage statements, overtime pay and meal and rest periods from September 20, 2021 to May 18, 2022. 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. DEFENDANT as a non-exempt employee is also entitled to accurate itemized wage statements.

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 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time between during the period beginning four (4) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA

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

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

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

25 7. The agents, servants and/or employees of the Defendant and each of them
26 acting on behalf of the Defendants acted within the course and scope of his, her or its
27 authority as the agent, servant and/or employee of the Defendants, and personally
28 participated in the conduct alleged herein on behalf of the Defendants with respect to the

1 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable
2 to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF
3 and the other members of the CALIFORNIA CLASS, for the loss sustained as a
4 proximate result of the conduct of the Defendants' agents, servants and/or employees.

5 THE CONDUCT

6 8. Pursuant to the Industrial Welfare Commission Wage Orders,
7 DEFENDANT is required to pay PLAINTIFF and the CALIFORNIA CLASS Members
8 for all their time worked, meaning the time during which an employee is subject to the
9 control of an employer, including all the time the employee is suffered or permitted to
10 work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA
11 CLASS Members to work without paying them for all the time they were under
12 DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work
13 while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break, as
14 well as before his shift started and after his shift ended. DEFENDANT required
15 PLAINTIFF and the CALIFORNIA CLASS Members to work off the clock without
16 paying them for all the time they performed duties while on their meal break, specifically
17 by failing to provide enough labor hours to accomplish all the job tasks that
18 DEFENDANT expected PLAINTIFF and the CALIFORNIA CLASS Members to
19 complete on a daily and/or weekly basis. From time to time, PLAINTIFF was also often
20 interrupted by work assignments during his breaks. Indeed there were many days where
21 PLAINTIFF did not even receive a partial meal break. PLAINTIFF and other
22 CALIFORNIA CLASS Members are not paid for their work time putting on their work
23 gear because they are not paid until they are ready to work prior to their shift.
24 DEFENDANT failed to pay PLAINTIFF and CALIFORNIA CLASS Members for this
25 donning and doffing time on the mandatory protective gear. Additionally, from time to
26 time, DEFENDANT engages in the practice of requiring PLAINTIFF and
27 CALIFORNIA CLASS Members to perform work off the clock that DEFENDANT, as a
28 condition of employment, requires these employees to wait in line and submit to

1 mandatory temperature check for COVID-19 screening prior to clocking into
2 DEFENDANT’S timekeeping system for the workday. Additionally, prior to clocking in
3 for a shift, PLAINTIFF and other CALIFORNIA CLASS Members are required to put
4 on their work uniforms and protective gear, including but not limited to, oil resistant sole
5 shoes, uniform, safety glasses, safety gloves, facial covering mask, and ear plugs.
6 Finally, PLAINTIFF and other members of the CALIFORNIA CLASS from time to time
7 were not paid wages for all the time worked, including overtime wages, such that in the
8 aggregate employees were underpaid wages as a result of DEFENDANT’S pattern and
9 practice of unevenly rounding time worked by its employees. DEFENDANTS also
10 underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS
11 MEMBERS by failing to pay such wages at the regular rate of pay. Specifically,
12 PLAINTIFF and other non-exempt employees regularly earn non-discretionary
13 remuneration, including but not limited to, incentives, shift differential pay and bonuses.
14 Rather, than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
15 PLAINTIFF and other CALIFORNIA CLASS MEMBERS at their base rates of pay. As
16 a result, PLAINTIFF and other California CLASS Members forfeit minimum wage,
17 overtime wage compensation, and off-duty meal breaks by working without their time
18 being correctly recorded and without compensation at the applicable rates. As a result,
19 the PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited
20 minimum wage and overtime compensation by working without their time being
21 accurately recorded and without compensation at the applicable minimum wage and
22 overtime rates. DEFENDANT’S uniform policy and practice not to pay PLAINTIFF and
23 other CALIFORNIA CLASS Members for all time worked is evidenced by
24 DEFENDANT’S business records.

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

1 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have
2 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
3 other CALIFORNIA CLASS Members for the actual time these employees worked each
4 day, including overtime hours. As a result DEFENDANT was able to and did in fact
5 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping
6 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
7 paying these employees the applicable overtime compensation for overtime worked and
8 to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
9 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by
10 working without their time being accurately recorded and without compensation at the
11 applicable overtime rates.

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

20 12. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were also from time to time unable to take off duty
22 meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
23 CALIFORNIA CLASS Members were required to perform work as ordered by
24 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
25 meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA
26 CLASS Members with a second off-duty meal period each workday in which these
27 employees were required by DEFENDANT to work ten (10) hours of work. From time to
28 time, when a meal break was provided, PLAINTIFF was required to remain on

1 DEFENDANT's premises, on-call and on-duty, and was interrupted with work.
2 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
3 breaks without additional compensation and in accordance with DEFENDANT's strict
4 corporate policy and practice

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

1 14. When PLAINTIFF and other CALIFORNIA CLASS Members were not
2 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANT also
3 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
4 complete and accurate wage statements which failed to show, among other things, the
5 time worked, including, work performed in excess of eight (8) hours in a workday and/or
6 forty (40) hours in any workweek, and the correct penalty payments or missed meal and
7 rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his
8 or her employees with an accurate itemized wage statement in writing showing, among
9 other things, gross wages earned and all applicable hourly rates in effect during the pay
10 period and the corresponding amount of time worked at each hourly rate. Aside, from the
11 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
12 itemized wage statement that lists all the requirements under California Labor Code 226
13 *et seq.*, As a result, from time to time DEFENDANT provided PLAINTIFF and the other
14 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
15 Code § 226.

16 15. 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 the correct time and overtime for the time worked by
21 PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
22 employees’ time is the DEFENDANT’s burden. As a result of DEFENDANT’s
23 intentional disregard of the obligation to meet this burden, DEFENDANT failed to
24 properly calculate and/or pay all required compensation for work performed by the
25 members of the CALIFORNIA CLASS and violated the California Labor Code and
26 regulations promulgated thereunder as herein alleged.

27 16. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission (“IWC”) Wage Order,

1 DEFENDANT as a matter of company policy, practice and procedure, intentionally and
2 knowingly failed to compensate PLAINTIFF and the other members of the
3 CALIFORNIA CLASS for missed meal and rest periods. This uniform policy and
4 practice of DEFENDANT is intended to purposefully avoid the payment for all time
5 worked as required by California law which allows DEFENDANT to illegally profit and
6 gain an unfair advantage over competitors who complied with the law. To the extent
7 equitable tolling operates to toll claims by the CALIFORNIA CLASS against
8 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

20 18. Specifically as to PLAINTIFF’s pay, PLAINTIFF was from time to time
21 unable to take off duty meal and rest breaks and was not fully relieved of duty for his
22 meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT
23 for more than five (5) hours during a shift without receiving an off-duty meal break.
24 Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
25 each workday in which he was required by DEFENDANT to work ten (10) hours of
26 work. PLAINTIFF therefore forfeited meal and rest breaks without additional
27 compensation and in accordance with DEFENDANT’s strict policy and practice. To
28 date, DEFENDANT has not fully paid PLAINTIFF the minimum wage and overtime

1 compensation still owed to him or any penalty wages owed to them under Cal. Lab. Code
2 § 203.

3 19. PLAINTIFF was hired by DEFENDANT with an hourly pay and worked
4 on average 40 hours per week. PLAINTIFF was an excellent and dedicated employee
5 until his wrongful termination on May 18, 2022.

6 20. Importantly, DEFENDANT had a practice of imposing disciplinary action
7 on PLAINTIFF's protected time off from work. Each time PLAINTIFF needed to be out,
8 he provided valid reasons and/or documentation, had the leave approved, and then got
9 written up for taking the approved leave.

10 21. As a full-time employee, PLAINTIFF was entitled to 80 hours of sick time
11 to use for COVID-19 related leave. On information and belief, DEFENDANT similarly
12 incorrectly deducted or assigned sick and vacation time of all CLASS MEMBERS and
13 Aggrieved Employees.

14 22. On May 18, 2022, PLAINTIFF was terminated for taking lawful time off.

15 **JURISDICTION AND VENUE**

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

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

26 **THE CALIFORNIA CLASS**

27 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
28 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the

1 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
2 California class, defined as all individuals who are or previously were employed by
3 Defendant and/or Defendant in California and classified as non-exempt employees (the
4 "CALIFORNIA CLASS") at any time between March 15, 2018 and the date as
5 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
6 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
7 million dollars (\$5,000,000.00).

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

11 27. The CALIFORNIA CLASS is so numerous that joinder of all
12 CALIFORNIA CLASS Members is impracticable.

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

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

1 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
2 under California law by:

- 3 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
4 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
5 company policies, practices and procedures that failed to pay all wages due
6 the CALIFORNIA CLASS for all minimum wages and overtime worked.
7 b. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
9 provide mandatory meal and/or rest breaks to PLAINTIFF and the
10 CALIFORNIA CLASS members;
11 c. Committing an act of unfair competition in violation of the California Unfair
12 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating
13 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
14 CALIFORNIA CLASS Members with necessary expenses incurred in the
15 discharge of their job duties.

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

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

1 wages who was subjected to the DEFENDANT's practice and policy which
2 failed to pay the correct rate of overtime wages due to the CALIFORNIA
3 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
4 systematically under pays overtime compensation to the CALIFORNIA
5 CLASS. PLAINTIFF sustained economic injury as a result of
6 DEFENDANT's employment practices. PLAINTIFF and the members of
7 the CALIFORNIA CLASS were and are similarly or identically harmed by
8 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
9 engaged in by DEFENDANT; and

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

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

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

- 24 i. Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA CLASS which would establish
26 incompatible standards of conduct for the parties opposing the
27 CALIFORNIA CLASS; and/or;
28

- 1 ii. Adjudication with respect to individual members of the
2 CALIFORNIA CLASS which would as a practical matter be
3 dispositive of interests of the other members not party to the
4 adjudication or substantially impair or impede their ability to protect
5 their interests.
- 6 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act
7 on grounds generally applicable to the CALIFORNIA CLASS, making
8 appropriate class-wide relief with respect to the CALIFORNIA CLASS as a
9 whole in that DEFENDANT uniformly failed to pay all wages due, including
10 the correct overtime rate, for all time worked by the members of the
11 CALIFORNIA CLASS as required by law;
- 12 i. With respect to the First Cause of Action, the final relief on behalf of
13 the CALIFORNIA CLASS sought does not relate exclusively to
14 restitution because through this claim PLAINTIFF seek declaratory
15 relief holding that the DEFENDANT's policy and practices constitute
16 unfair competition, along with declaratory relief, injunctive relief,
17 and incidental equitable relief as may be necessary to prevent and
18 remedy the conduct declared to constitute unfair competition;
- 19 c. Common questions of law and fact exist as to the members of the
20 CALIFORNIA CLASS, with respect to the practices and violations of
21 California law as listed above, and predominate over any question affecting
22 only individual CALIFORNIA CLASS Members, and a Class Action is
23 superior to other available methods for the fair and efficient adjudication of
24 the controversy, including consideration of:
- 25 i. The interests of the members of the CALIFORNIA CLASS in
26 individually controlling the prosecution or defense of separate actions
27 in that the substantial expense of individual actions will be avoided
28 to recover the relatively small amount of economic losses sustained

1 by the individual CALIFORNIA CLASS Members when compared
2 to the substantial expense and burden of individual prosecution of this
3 litigation;

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

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

10 2. Adjudications with respect to individual members of the
11 CALIFORNIA CLASS would as a practical matter be
12 dispositive of the interests of the other members not parties to
13 the adjudication or substantially impair or impede their ability
14 to protect their interests;

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

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

26 33. The Court should permit this action to be maintained as a Class Action
27 pursuant to Cal. Code of Civ. Proc. § 382 because:
28

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;

1 h. The members of the CALIFORNIA CLASS are readily ascertainable from
2 the business records of DEFENDANT; and

3 i. Class treatment provides manageable judicial treatment calculated to bring
4 an efficient and rapid conclusion to all litigation of all wage and hour related
5 claims arising out of the conduct of DEFENDANT as to the members of the
6 CALIFORNIA CLASS.

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

13 **THE CALIFORNIA LABOR SUB-CLASS**

14 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
15 Eighth and Ninth Causes of Action on behalf of a California sub-class, defined as all
16 members of the CALIFORNIA CLASS classified as non-exempt employees (the
17 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning 4 years
18 before the filing of the complaint and ending on the date as determined by the Court (the
19 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. §
20 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
21 CLASS Members is under five million dollars (\$5,000,000.00).

22 36. DEFENDANT, as a matter of company policy, practice and procedure, and
23 in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
24 Order requirements, and the applicable provisions of California law, intentionally,
25 knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly
26 pay for all time worked by PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work,
28 required employees to perform this work and permitted or suffered to permit this overtime

1 work. DEFENDANT have uniformly denied these CALIFORNIA LABOR SUB-CLASS
2 Members minimum and overtime wages at the correct amount to which these employees
3 are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent
4 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
5 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
6 adjusted accordingly.

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

13 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
14 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 17 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
18 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
19 violation of the California Labor Code and California regulations and the
20 applicable California Wage Order;
- 21 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
22 entitled to overtime compensation for overtime worked under the overtime
23 pay requirements of California law;
- 24 c. Whether DEFENDANT failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS with legally required
26 uninterrupted thirty (30) minute meal breaks and rest periods;

- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- e. Whether DEFENDANT have engaged in unfair competition by the above-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.

40. 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.

41. 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 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;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing time worked at by the employee;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.
- f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.
- g. Violating Cal. Lab. Code §§233 and 234 by denying PLAINTIFF the right to use sick leave and terminating PLAINTIFF for using sick leave he was entitled to.

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

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

1 SUB-CLASS and will apply uniformly to every member of the
2 CALIFORNIA LABOR SUB-CLASS;

3 c. The claims of the representative PLAINTIFF are typical of the claims of
4 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
5 like all the other members of the CALIFORNIA LABORSUB-CLASS, was
6 a non-exempt employee paid on an hourly basis and paid additional non-
7 discretionary incentive wages who was subjected to the DEFENDANT's
8 practice and policy which failed to pay the correct rate of overtime wages
9 due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked.
10 PLAINTIFF sustained economic injury as a result of DEFENDANT's
11 employment practices. PLAINTIFF and the members of the CALIFORNIA
12 LABOR SUB-CLASS were and are similarly or identically harmed by the
13 same unlawful, deceptive, unfair and pervasive pattern of misconduct
14 engaged in by DEFENDANT; and

15 d. The representative PLAINTIFF will fairly and adequately represent and
16 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
17 retained counsel who are competent and experienced in Class Action
18 litigation. There are no material conflicts between the claims of the
19 representative PLAINTIFF and the members of the CALIFORNIA LABOR
20 SUB-CLASS that would make class certification inappropriate. Counsel for
21 the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims
22 of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

- 3 i. Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which would
5 establish incompatible standards of conduct for the parties opposing
6 the CALIFORNIA LABOR SUB-CLASS; or
- 7 ii. Adjudication with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS which would as a practical
9 matter be dispositive of interests of the other members not party to
10 the adjudication or substantially impair or impede their ability to
11 protect their interests.
- 12 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
13 or refused to act on grounds generally applicable to the CALIFORNIA
14 LABOR SUB-CLASS, making appropriate class-wide relief with respect to
15 the CALIFORNIA LABOR SUB-CLASS as a whole in that
16 DEFENDANTS uniformly failed to pay all wages due, including the correct
17 overtime rate, for all overtime worked by the members of the CALIFORNIA
18 LABOR SUB-CLASS as required by law;
- 19 c. Common questions of law and fact predominate as to the members of the
20 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
21 violations of California Law as listed above, and predominate over any
22 question affecting only individual CALIFORNIA LABOR SUB-CLASS
23 Members, and a Class Action is superior to other available methods for the
24 fair and efficient adjudication of the controversy, including consideration of:
 - 25 i. The interests of the members of the CALIFORNIA LABOR SUB-
26 CLASS in individually controlling the prosecution or defense of
27 separate actions in that the substantial expense of individual actions
28 will be avoided to recover the relatively small amount of economic

1 losses sustained by the individual CALIFORNIA LABOR SUB-
2 CLASS Members when compared to the substantial expense and
3 burden of individual prosecution of this litigation;

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

6 1. Inconsistent or varying adjudications with respect to
7 individual members of the CALIFORNIA LABOR SUB-
8 CLASS, which would establish incompatible standards of
9 conduct for the DEFENDANTS; and/or,

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

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

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

26 44. This Court should permit this action to be maintained as a Class Action
27 pursuant to Cal. Code of Civ. Proc. § 382 because:
28

- 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;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

- 1 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members classified as non-exempt employees during the
5 CALIFORNIA LABOR SUB-CLASS PERIOD; and
6 i. Class treatment provides manageable judicial treatment calculated to bring
7 an efficient and rapid conclusion to all litigation of all wage and hour related
8 claims arising out of the conduct of DEFENDANTS as to the members of
9 the CALIFORNIA LABOR SUB-CLASS.

10 **FIRST CAUSE OF ACTION**

11 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

17 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. And
18 Prof. Code § 17021.

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

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

1 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to,
3 the applicable Wage Order(s), the California Code of Regulations and the California Labor
4 Code including Sections 201, 202, 203, 204, 226(a), 210, 226.7, 510, 512, 558, 1194, 1197
5 & 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable
6 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
7 remedy the conduct held to constitute unfair competition, including restitution of wages
8 wrongfully withheld.

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

15 50. By the conduct alleged herein, DEFENDANT's practices were deceptive
16 and fraudulent in that DEFENDANT's uniform policy and practice failed to pay
17 PLAINTIFF, and other members of the CALIFORNIA CLASS, minimum wages, wages
18 due for overtime worked, and failed to provide the required amount of overtime
19 compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
20 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which
21 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
22 § 17203, including restitution of wages wrongfully withheld.

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

27 52. By the conduct alleged herein, DEFENDANT's practices were also unfair
28 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to

1 provide all legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
2 CLASS members as required by Cal. Lab. Code §§226.7 and 512.

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

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

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

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

24 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are
25 entitled to, and do, seek such relief as may be necessary to restore to them the money and
26 property which DEFENDANT has acquired, or of which PLAINTIFF and the other
27 members of the CALIFORNIA CLASS have been deprived, by means of the above
28

1 described unlawful and unfair business practices, including earned but unpaid wages for
2 all overtime worked.

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**
16 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

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

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

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

27 62. 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 63. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
2 the commission is the minimum wage to be paid to employees, and the payment of a wage
3 less than the minimum so fixed is unlawful.

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

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

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

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

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

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

1 DEFENDANT fails to accurately pay the PLAINTIFF and members of the CALIFORNIA
2 LABOR SUB-CLASS the wages for the time they work in accordance with 1197 &
3 1197.1, even though the PLAINTIFF and the other members of the CALIFORNIA
4 LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in fact
5 work, off the clock time as to which DEFENDANT fails to accurately record and pay as
6 evidence by DEFENDANT's business records and witnessed by employees.

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

13 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS for the true time they worked, PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
17 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
20 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
21 time worked. DEFENDANTS systematically elected, either through intentional
22 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
23 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
24 systematic scheme by refusing to pay PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

1 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 with conscious and utter disregard for their legal rights, or the consequences to them, and
3 with the despicable intent of depriving them of their property and legal rights, and
4 otherwise causing them injury in order to increase company profits at the expense of these
5 employees.

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME COMPENSATION** 20 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)** 21 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against** 22 **ALL Defendants)**

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

26 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
28 California Labor Code and the Industrial Welfare Commission requirements for
DEFENDANT's failure to properly compensate the members of the CALIFORNIA

1 LABOR SUB-CLASS for all overtime worked, including, work performed in excess of
2 eight (8) hours in a workday and/or twelve (12) hours in a workday, and/or forty (40) hours
3 in any workweek.

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

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

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

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

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

27 82. In committing these violations of the California Labor Code, DEFENDANT
28 inaccurately records overtime worked and consequently underpays the overtime worked
by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members.

1 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
2 other benefits in violation of the California Labor Code, the Industrial Welfare
3 Commission requirements and other applicable laws and regulations.

4 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
5 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
6 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
7 including overtime work.

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

11 85. Cal. Lab. Code § 515 sets out various categories of employees who are
12 exempt from the overtime requirements of the law. None of these exemptions are
13 applicable to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS. Further PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS are not subject to a valid collective bargaining agreement that would preclude the
16 causes of action contained herein this Complaint. Rather, PLAINTIFF bring this Action
17 on behalf of themselves and the CALIFORNIA LABOR SUB-CLASS based on
18 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State
19 of California.

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

23 87. DEFENDANT failed to accurately pay PLAINTIFF and the other members
24 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked
25 which was in excess of the maximum hours permissible by law as required by Cal. Lab.
26 Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work,
28 overtime as to which DEFENDANT failed to accurately record and pay using the

1 applicable overtime rate as evidenced by DEFENDANT's business records and witnessed
2 by employees.

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

9 89. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their
11 overtime worked. DEFENDANT systematically elected, either through intentional
12 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
13 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
14 systematic scheme by refusing to pay PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

25 91. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all unpaid wages, including overtime wages,
27 according to proof, interest, statutory costs, as well as the assessment of any statutory
28 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or
other applicable statutes. To the extent overtime compensation is determined to be owed

1 to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
2 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and
3 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
4 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
5 SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
6 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR
7 SUB-CLASS Members are entitled to seek and recover statutory costs.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

94. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal 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 a meal period was not provided.

95. 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.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

96. 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.

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

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

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

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

12 **(Cal. Lab. Code § 226)**

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

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

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

- 20 a. Gross wages earned;
- 21 b. Total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment
23 of overtime under subdivision (a) of Section 515 or any applicable order of
24 the Industrial Welfare Commission;
- 25 c. The number of piece rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis;
- 27 d. All deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item;
- e. Net wages earned;

- f. The inclusive dates of the period for which the employee is paid;
- g. 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;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

102. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. 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. Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

103. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the time worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to

1 estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
3 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for
4 each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount
5 according to proof at the time of trial (but in no event more than four thousand dollars
6 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR
7 SUB-CLASS herein.

8 **SEVENTH CAUSE OF ACTION**

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

10 **(Cal. Lab. Code §2802)**

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

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

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

17 An employed shall indemnify his or her employee for all necessary
18 expenditures or losses incurred by the employee in direct consequence of the
19 discharge of his or her duties, or of his or her obedience to the directions of
20 the employer, even though unlawful, unless the employee, at the time of
21 obeying the directions, believe them to be unlawful.

22 106. At all relevant times herein, DEFENDANT violated Cal. Lab Code §2802, by
23 failing to indemnify and reimburse PLAINTIFF and the California Labor Sub-Class
24 Members for required expenses incurred in the discharge of their job duties for
25 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
26 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
27 limited to, costs related to their required uniform and using their personal cellular phones on
28 behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use
their personal cellular phones in order to perform work related job tasks. DEFENDANT's
policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-

1 CLASS members for expenses resulting from using their personal cellular phones for
2 DEFENDANT within the course and scope of their employment for DEFENDANT. These
3 expenses were necessary to complete their principal job duties. DEFENDANT is estopped
4 by DEFENDANT's conduct to assert any waiver of this expectation. Although these
5 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR
6 SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
7 the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is
8 required to do under the laws and regulations of California.

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

13 **EIGHTH CAUSE OF ACTION**
14 **FAILURE TO PAY WAGES WHEN DUE**
15 **(Cal. Lab. Code §§201, 202, 203)**
16 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
17 **all Defendants)**

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

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

21 As used in this article:

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

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

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

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

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

12 112. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
13 SUB-CLASS Members’ employment contract.

14 113. Cal. Lab. Code § 203 provides:

15 If an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall
18 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.

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

22 115. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
23 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has,
24 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at
25 time of termination for all employees who terminated employment during the
26 CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment
27 of all wages due, plus interest and statutory costs as allowed by law.
28

1 **NINTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 233 AND 234**
3 **(Alleged by PLAINTIFF against all Defendants)**

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

7 117. Pursuant to California Labor Code section 233(c)an employer shall not deny
8 an employee the right to use sick leave or discharge, threaten to discharge, demote,
9 suspend, or in any manner discriminate against an employee for using, or attempting to
10 exercise the right to use, sick leave to attend to an illness or the preventative care of a
11 family member, or for any other reason specified in subdivision (a) of Section 246.5.

12 118. Pursuant to Cal. Labor Code Section 234, an employer absence control
13 policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to
14 or result in discipline, discharge, demotion, or suspension is a per se violation of Section
15 233. An employee working under this policy is entitled to appropriate legal and equitable
16 relief pursuant to Section 233. As alleged above, Plaintiff was discharged by Defendants,
17 in part, for taking sick leave for attending to his own illness. On information and belief,
18 Defendants similarly denied, discharged, threatened to discharge, demoted, suspended, or
19 in another manner discriminated against all aggrieved employees, for using, or attempting
20 to exercise the right to use, sick leave to attend to an illness or the preventive care of a
21 family member etc. Additionally, as alleged, Defendants also followed an absence control
22 practice towards Plaintiff and all aggrieved employees in violation of Cal. Labor code
23 Section 234.

24 119. As a result of the aforesaid violations Plaintiff will seek damages statutory
25 penalties, civil penalties pursuant to Cal. Labor Code 2699(a) and (f) against Defendants
26 on behalf of himself and all aggrieved employees for violation of Cal. Labor Code §§ 233
27 and 234 in addition to actual damages, reinstatement, interest, and an award of attorney's
28 fees and costs.

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TENTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
[Cal. Lab. Code §§ 2698 et seq.]
(Alleged by PLAINTIFF against all Defendants)

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

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

122. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT in California during the time period of August 3, 2021 until the present (the "AGGRIEVED EMPLOYEES").

123. On August 3, 2022, PLAINTIFF, via counsel, sent the statutorily required notice to the Labor and Workforce Development Agency (the "Agency").

124. On August 3, 2022, PLAINTIFF, via counsel, also sent a copy of the August 3, 2022 notice to DEFENDANT's attorney of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant

1 to Section 2699.3, PLAINTIFF may now commence a representative civil action under
2 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined. Therefore, PLAINTIFF has exhausted the
4 administrative requirements as required under PAGA.

5 125. The policies, acts and practices heretofore described were and are an
6 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
7 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
8 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
9 rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
10 pay wages, (e) failed to pay earned wages in violation of the applicable Labor Code
11 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201,
12 202, 203, 204 *et seq.*, 226(a), 226.2, 226.3, 226.7, 227.3, 232, 233, 234, 246 *et seq.*, 510,
13 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and the applicable Industrial
14 Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
15 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
16 Private Attorney General Act of 2004 as the representative of the State of California for
17 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
18 EMPLOYEES.

19 126. Some or all of the conduct and violations alleged herein occurred during the
20 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did
21 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
22 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
23 *Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
24 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
25 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
26 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
27 added, reh'g denied (June 13, 2018).)

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a 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:

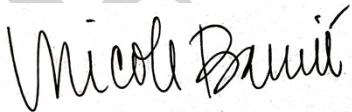
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages and overtime compensation and unreimbursed expenses 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. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

- d. Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
 - e. 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 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code §226; and
 - f. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code §203.
 - g. Penalties pursuant to Cal. Lab. Code §1198.5.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004 and other applicable laws; and
 - b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
 - c. An award of reasonable attorneys' fees, costs and filing fees paid to the LWDA pursuant to California Labor Code § 2699(g) and/or other applicable law;
 - d. An award of reasonable attorneys' fees and costs pursuant to California Labor Code § 226, 248.5, and/or other applicable law;
 - e. Pre-judgment interest as provided by law;
4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and

- 1 c. An award of penalties, attorneys' fees and costs of suit, as allowable under
2 the law, including, but not limited to, pursuant to Labor Code §218.5, §226,
3 §1194 and/or §2802.
4 5. Damages, statutory penalties and/or interest pursuant to Cal. Labor Code
5 §§ 203, 226, 233, 234, 245, 246.6, 1102.5 and 1198.5.
6 6. For general damages, according to proof, including in the amount of all
7 unpaid and wrongfully withheld wages, including premium wages;
8 7. For such other and further relief as the Court deems just and proper.
9

10 Dated: October ____, 2022

11 **BARVIÉ LAW, APC**

12 By: 
13 _____

14 NICOLE BARVIÉ
15 Attorneys for Plaintiff(s)
16
17
18

19 **DEMAND FOR A JURY TRIAL**

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

21 Dated: October ____ 2022

22 **BARVIÉ LAW, APC**

23 By: 
24 _____

25 NICOLE BARVIÉ
26 Attorneys for Plaintiff(s)
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EXHIBIT 1