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Superior Court of California
County of Los Angeles

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Sherri K. [Signature], Deputy Clerk of Court
By [Signature], Deputy
Steven Drew

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 YVETTE MOLINA, an individual, on behalf
of herself and on behalf of all persons similarly
13 situated,

14 Plaintiff,

15 vs.

16 HAWAIIAN AIRLINES, INC., a Corporation;
17 and DOES 1 through 50, inclusive,

18 Defendants.
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Case No: 20STCV28079

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *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 REIMURSE 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;

REPRESENTATIVE ACTION

9) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT LABOR
CODE §§ 2698 *ET SEQ.*

DEMAND FOR A JURY TRIAL

Plaintiff YVETTE MOLINA (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated current and former employees, and in her representative capacity on behalf of the State of California, alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

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

2. DEFENDANT operates an airline company. DEFENDANT’s operations are based out of and focus on travel to and from the state of Hawaii. DEFENDANT conducts operations and employs employees in various airports in California, including LAX and SFO.

3. PLAINTIFF has been employed by DEFENDANT in California since April 2016 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled bonuses, and to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of herself 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 during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

1 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy and practice
2 which failed to lawfully compensate these employees. DEFENDANT's uniform policy and
3 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
4 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of
5 the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
6 seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
7 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
8 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
9 equitable relief.

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

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

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THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Indeed there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the production levels for each employee at the busy work sites they provided services for.

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

12 11. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue
13 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
14 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately
15 calculate wages for overtime worked by PLAINTIFF and other members of the CALIFORNIA
16 CLASS in order to avoid paying these employees the correct overtime compensation. As a result,
17 PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for
18 working overtime without compensation at the correct overtime rates. DEFENDANT's uniform
19 policy and practice to not pay the members of the CALIFORNIA CLASS the correct overtime
20 rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT's
21 business records.

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

26 13. The second component of PLAINTIFF's and other CALIFORNIA CLASS
27 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
28 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their

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

12 14. In violation of the applicable sections of the California Labor Code and the
13 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
14 matter of company policy, practice and procedure, intentionally and knowingly failed to
15 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
16 of pay for all overtime worked. This uniform policy and practice of DEFENDANT is intended to
17 purposefully avoid the payment of the correct overtime compensation as required by California
18 law which allowed DEFENDANT to illegally profit and gain an unfair advantage over
19 competitors who complied with the law. To the extent equitable tolling operates to toll claims by
20 the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should
21 be adjusted accordingly.

22 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
23 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of
24 time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
25 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
26 time worked, meaning the time during which an employee was subject to the control of an
27 employer, including all the time the employee was permitted or suffered to permit this work.
28 DEFENDANT required these employees to work off the clock without paying them for all the

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

9 16. DEFENDANT as a matter of corporate policy, practice and procedure,
10 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
11 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
12 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
13 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
14 are required to indemnify employees for all expenses incurred in the course and scope of their
15 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
16 her employee for all necessary expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
18 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
19 believed them to be unlawful."

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

3 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
4 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
5 to show, among other things, the correct wages paid. Cal. Lab. Code § 226 provides that every
6 employer shall furnish each of his or her employees with an accurate itemized wage statement in
7 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
8 during the pay period and the corresponding amount of time worked at each hourly rate. Aside,
9 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
10 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
11 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
12 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

22 20. By reason of this uniform conduct applicable to PLAINTIFF and all
23 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
24 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
25 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
26 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
27 CLASS Members. The proper recording of these employees' missed meal and rest breaks is the
28 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation

1 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
2 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
3 California Labor Code and regulations promulgated thereunder as herein alleged.

4 21. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
5 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor
6 Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT did not
7 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and
8 also failed to compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work
9 performed by the PLAINTIFF did not prevent her from being relieved of all of her duties for the
10 legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
11 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
12 records. As a result of DEFENDANT not accurately recording all missed meal and rest periods
13 and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by
14 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,
15 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and DEFENDANT has
16 failed to pay any penalty wages owed to her under California Labor Code Section 203. The
17 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

18 **JURISDICTION AND VENUE**

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

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

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THE CALIFORNIA CLASS

24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of 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 during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

1 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
4 California law by:

- 5 a. Committing an act of unfair competition in violation of Cal. Bus. & Prof. Code §§
6 17200, et seq. (the "UCL"), by unlawfully, unfairly and/or deceptively having in
7 place company policies, practices and procedures that uniformly and
8 systematically failed to record and pay PLAINTIFF and the other members of the
9 CALIFORNIA CLASS for all time worked, including minimum wages owed and
10 overtime wages owed for work performed by these employees;
- 11 b. Committing an act of unfair competition in violation of the UCL, by failing to
12 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
13 with the legally required meal and rest periods;
- 14 c. Committing an act of unfair competition in violation of the UCL by failing to pay
15 the PLAINTIFF and the other members of the CALIFORNIA CLASS the correct
16 rate of overtime;
- 17 d. Committing an act of unfair competition in violation of the California Unfair
18 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 et seq., by violating Cal. Lab.
19 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
20 members with necessary expenses incurred in the discharge of their job duties.

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

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

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

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

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

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

5 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
6 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
7 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
8 DEFENDANT uniformly classified and treated the CALIFORNIA CLASS
9 Members as independent contractors and, thereafter, uniformly failed to take
10 proper steps to determine whether the CALIFORNIA CLASS Members were
11 properly classified as independent contractors, and thereby denied these
12 employees wages and payments for business expenses and the employer's share of
13 payroll taxes and mandatory insurance as required by law.

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

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

27 i. The interests of the members of the CALIFORNIA CLASS in individually
28 controlling the prosecution or defense of separate actions in that the

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

26 32. The Court should permit this action to be maintained as a Class Action pursuant
27 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 have 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;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA CLASS.

3 33. DEFENDANT maintains records from which the Court can ascertain and identify
4 by name job title each of DEFENDANT’S employees who have been systematically, intentionally
5 and uniformly subjected to DEFENDANT’S corporate policies, practices and procedures as
6 herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job
7 titles of similarly situated employees when they have been identified.

8 **THE CALIFORNIA LABOR SUB-CLASS**

9 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
10 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
11 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
12 (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior
13 to the filing of the complaint and ending on the date as determined by the Court (the
14 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
15 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
16 Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

26 39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
27 under California law by:
28

- 1 a. Violating Cal. Lab. Code §§ 510, et seq., by failing to correctly pay the
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
3 wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal.
4 Lab. Code § 1194;
- 5 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately
6 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
7 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
8 Lab. Code §§ 1194 and 1197;
- 9 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
10 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
11 statement in writing showing the corresponding correct amount of wages earned
12 by the employee;
- 13 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS with all legally
15 required off-duty, uninterrupted thirty (30) minute meal breaks and the legally
16 required off-duty rest breaks;
- 17 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
18 CALIFORNIA CLASS members with necessary expenses incurred in the
19 discharge of their job duties; and,
- 20 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
21 employee is discharged or quits from employment, the employer must pay the
22 employee all wages due without abatement, by failing to tender full payment
23 and/or restitution of wages owed or in the manner required by California law to
24 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
25 their employment

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

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

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

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
4 the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA LABOR SUB-CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA LABOR SUB-CLASS; or
- 9 ii. Adjudication with respect to individual members of the CALIFORNIA
10 LABOR SUB-CLASS which would as a practical matter be dispositive of
11 interests of the other members not party to the adjudication or substantially
12 impair or impede their ability to protect their interests.
- 13 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
14 refused to act on grounds generally applicable to the CALIFORNIA LABOR
15 SUB-CLASS, making appropriate class-wide relief with respect to the
16 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
17 fails to pay all wages due. Including the correct wages for all time worked by the
18 members of the CALIFORNIA 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 violations
21 of California Law as listed above, and predominate over any question affecting
22 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
23 Action is superior to other available methods for the fair and efficient adjudication
24 of the controversy, including consideration of:
- 25 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
26 in individually controlling the prosecution or defense of separate actions in
27 that the substantial expense of individual actions will be avoided to recover
28 the relatively small amount of economic losses sustained by the individual

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- CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
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 DEFENDANT; 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.

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- 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 has 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;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA

LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and

- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

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

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

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

44. DEFENDANT are “persons” as that term is defined under Cal. Bus. And Prof. Code § 17021.

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to 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).

46. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1 & 1198 & 2802, for which

1 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
2 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
3 competition, including restitution of wages wrongfully withheld.

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

9 48. By the conduct alleged herein, DEFENDANT's practices were deceptive and
10 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
11 mandated meal and rest periods, the required amount of compensation for missed meal and rest
12 periods and overtime and minimum wages owed, and failed to reimburse all necessary business
13 expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the
14 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
15 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
16 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

25 51. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
26 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
27 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
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1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

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

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

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

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

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

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

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

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

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

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

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

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

13 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
14 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
15 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

1 80. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
3 full compensation for overtime worked.

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

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

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

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

27 85. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime
4 worked.

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

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

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FOURTH CAUSE OF ACTION

**FAILURE TO PROVIDE REQUIRED MEAL PERIODS
(Cal. Lab. Code §§ 226.7 & 512)**

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

88. 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.

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

90. DEFENDANT further violates 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.

91. 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)

92. 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.

93. From time to time, 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.

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 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.

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.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code § 226)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS 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. Cal. Labor Code § 226 provides that an employer must furnish employees with an “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;
- 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.

98. From time to time, when DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' minimum and overtime wages earned and/or missed meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all missed meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees.

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

SIXTH CAUSE OF ACTION

FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code § 2802)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS 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. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

24 **EIGHTH CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES WHEN DUE**

26 **(Cal. Lab. Code §§201, 202, 203)**

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

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

4 105. Cal. Lab. Code § 200 provides that:

5 As used in this article: (a) "Wages" includes all amounts for labor performed by
6 employees of every description, whether the amount is fixed or ascertained by the
7 standard of time, task, piece, Commission basis, or other method of calculation. (b)
8 "Labor" includes labor, work, or service whether rendered or performed under
contract, subcontract, partnership, station plan, or other agreement if the labor to be
paid for is performed personally by the person demanding payment.

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

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

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

19 108. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-
20 CLASS Members' employment contract.

21 109. Cal. Lab. Code § 203 provides:

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

25 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
26 Members terminated and DEFENDANT have not tendered payment of all wages owed as required
27 by law.
28

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

NINTH CAUSE OF ACTION

VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT

(Cal. Lab. Code §§ 2698 *et seq.*)

(Alleged by PLAINTIFF in her representative capacity against all Defendants)

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

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

114. PLAINTIFF brings this Representative Action on behalf of the State of California with respect to herself and all of DEFENDANTS' current and former non-exempt employees employed in California ("AGGRIEVED EMPLOYEES") between April 6, 2019 and a future date set by this Court ("PAGA PERIOD").

115. To the extent equitable tolling operates to toll the claims asserted by the PLAINTIFF against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

1 116. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to
2 the California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled
3 the statute of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for
4 statutes of limitation and repose for civil causes of action that are 180 days or less, or (b) October
5 1, 2020 for statutes of limitation and repose for civil causes of action that exceed 180 days.

6 117. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
7 similarly situated employees were aggrieved employees of DEFENDANTS within the meaning
8 of Labor Code Section 2699(c).

9 118. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
10 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
11 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

12 119. PLAINTIFF complied with the procedures for bringing suit specified in Labor
13 Code Section 2699.3. By certified letter, return receipt requested, dated May 12, 2020,
14 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
15 and to DEENDANTS of the specific provisions of the Labor Code alleged to have been violated,
16 including the facts and theories to support the alleged violations.

17 120. As of the date of this filing, the LWDA has not provided any notice by certified
18 mail of its intent to investigate the DEFENDANTS’ alleged violations as mandated by Labor
19 Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
20 PLAINTIFF may commence and is authorized to pursue this cause of action.

21 121. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly
22 AGGRIEVED EMPLOYEEES are entitled to civil penalties for DEFENDANTS’ violations of
23 Labor Code Section 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,
24 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2804 in the following amounts:

- 25 a. For violation of Labor Code Sections 201, 202, 203, and 204,
26 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per
27 pay period for the initial violation and two hundred dollars (\$200) for
28 AGGIEVED EMPLOYEE per pay period for each subsequent

violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGIEVED

1 EMPLOYEE per pay period for each subsequent violation [penalty
2 per Labor Code Section].

3 122. For all provisions of the Labor Code for which civil penalty is not specifically
4 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100)
5 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred
6 dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation.
7 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
8 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code
9 Section 2699(g)(1).

10 **PRAYER FOR RELIEF**

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

13 1. On behalf of the CALIFORNIA CLASS:

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

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

- 22 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
23 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
24 action pursuant to Cal. Code of Civ. Proc. § 382;
25 b. Compensatory damages, according to proof at trial, including compensatory
26 damages due PLAINTIFF and the other members of the CALIFORNIA LABOR
27 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
28 PERIOD plus interest thereon at the statutory rate;

- 1 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per member of the
5 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
6 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
7 an award of costs for violation of Cal. Lab. Code § 226; and
- 8 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
9 CLASS as a penalty from the due date thereof at the same rate until paid or until an
10 action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 11 f. The amount of expenses PLAINTIFF and each member of the CALIFORNIA
12 LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and
13 costs of suit. And,
- 14 3. On behalf of the State of California and the AGGRIEVED EMPLOYEES
- 15 a. For reasonable attorneys' fees and costs of suit to the extent permitted by law,
16 including pursuant to Cal. Cal. Code § 2699, et seq.
- 17 b. For civil penalties to the extent permitted by law pursuant to the Labor Code under
18 the Private Attorneys General Act; and
- 19 c. For such other relief as the Court deems just and proper.
- 20 4. On all claims:
- 21 a. An award of interest, including prejudgment interest at the legal rate;
- 22 b. Such other and further relief as the Court deems just and equitable; and
- 23 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
24 including, but not limited to, pursuant to Labor Code § 226, § 1198 and/or § 2802.

25
26 DATED: November 3, 2020

27 By: 
28 Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: November 3, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for PLAINTIFF