

01/26/2024

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Superior Court of California,
County of Tulare
01/23/2024

By: April Mathews,
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

PSALMS MARTINEZ, on behalf of the State of
California and other aggrieved persons,

Plaintiff,

v.

SAPUTO DAIRY FOODS USA, LLC, a
Delaware limited liability corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: VCU294960

**JOINT STIPULATION AND
[PROPOSED] ORDER GRANTING
LEAVE TO ADD PLAINTIFFS AND
FILE AN AMENDED
CONSOLIDATED COMPLAINT**

Complaint filed: January 6, 2023

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Defendant Saputo Dairy Foods USA, LLC (“Saputo” or “Defendant”) and Plaintiff Psalms Martinez (“Martinez” or “Plaintiff”) (collectively, the “Parties”) by and through their respective attorneys of record, submit the following Joint Stipulation and [Proposed] Order for Leave to Add Plaintiffs And File An Amended Consolidated Complaint.

BACKGROUND

1. On October 31, 2022, Martinez filed a putative class action asserting wage and hour claims against Saputo in Tulare County Superior Court titled *Martinez v. Saputo Dairy Foods USA, LLC*, Case No. VCU293982. On December 19, 2022, Saputo removed that action to the United States District Court for the Eastern District of California, where it remains pending, Case No. 1:22-cv-01624-DJC-JDP (“*Martinez* Class Action”).

2. On November 21, 2022, Nataly Lopez Vargas (“Vargas”) filed a putative class action and representative action pursuant to the California Labor Code Private Attorneys’ General Act (“PAGA”) against Saputo in Stanislaus County Superior Court titled *Vargas v. Saputo Dairy Foods USA, LLC*, Case No. CV-22-005385. On December 28, 2022, Saputo removed the action to the United States District Court for the Eastern District of California, where it remains pending, Case No. 1:22-cv-01645-DJC-JDP (“*Vargas* Action”).

3. On January 6, 2023, Martinez filed the above-captioned PAGA-only action. On May 15, 2023, the Court granted Saputo’s motion to stay this action based on the substantial overlap of this case with the *Martinez* Class Action and *Vargas* Action.

4. On February 2, 2023, Juan Romero (“Romero”) filed a putative class action asserting wage and hour claims against Saputo in Merced County Superior Court, Case No. 23CV-00403. On March 22, 2023, Saputo removed that action to the United States District Court for the Eastern District of California, where it remains pending, Case No. 1:22-cv-00427-DJC-JDP (“*Romero* Class Action”).

5. On March 24, 2023, Saputo filed a Notice of Related Cases to alert this Court that the *Martinez* Class Action, *Vargas* Action, and *Romero* Class Action are all related to this Action within the meaning of California Rule of Court Rule 3.300, because they all allege

class and/or PAGA claims against Saputo on behalf of the same group of individuals based on the same or similar alleged violations.

6. On June 1, 2023, Romero filed a PAGA-only representative action in Tulare County Superior Court, Case No. VCU298775 (“*Romero PAGA Action*”). The *Romero PAGA* action asserts the same alleged predicate violations of the Labor Code as the *Romero Class Action*.

7. The *Martinez Class Action*, *Vargas Action*, *Romero Class Action*, and *Romero PAGA Action* are collectively referred to herein as the “Related Actions.”

8. On September 19, 2023, the Parties participated in private mediation of this and the Related Actions. At the private mediation, the Parties agreed to a global settlement resolving this action and the Related Actions (the “Settlement”).

9. Given the significant overlap in the claims asserted in the Related Actions, for the sake of judicial economy, and pursuant to the terms of the Parties’ Memorandum of Understanding reached after the mediation, the Parties intend to pursue approval of the Settlement through the above-captioned action.

10. To effectuate this intent, the Parties have agreed to seek Court approval to allow Martinez to file an amended consolidated complaint (“Amended Consolidated Complaint”) in this action that joins Vargas and Romero as additional named plaintiffs, adds their counsel to this case, and adds class claims and PAGA claims that mirror the class and PAGA claims alleged in the Related Actions and the PAGA notices that Martinez, Vargas, and Romero submitted to the California Labor and Workforce Development Agency.

11. Based on the foregoing, the Parties hereby enter into the following stipulation, subject to court approval, for leave for Martinez to add Vargas and Romero as plaintiffs to this action, add their counsel to this case, and file the Amended Consolidated Complaint, which is attached hereto as **Exhibit A**.

12. The Parties agree that Saputo need not file a responsive pleading to the Amended Consolidated Complaint. Should the Court not grant final approval of the Parties’ proposed settlement, the Amended Consolidated Complaint will be deemed withdrawn, this

1 matter will return to the status quo as existed prior to the date of the filing of this Stipulation,
2 and the operative complaint in this Action shall be the initial Complaint filed in this Action on
3 January 6, 2023.

4 **STIPULATION**

5 **IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:**

- 6 1. The stay of this matter is LIFTED;
- 7 2. Plaintiff is GRANTED leave to file the Amended Consolidated Complaint attached as
8 Exhibit A, including to add Nataly Lopez Vargas and Juan Romero as additional named
9 plaintiffs to this action and to add their counsel to this case. The Amended
10 Consolidated Complaint is deemed filed as of the date the Court enters an Order
11 approving this Stipulation.
- 12 3. Saputo need not respond to the Amended Consolidated Complaint. Should the Court
13 not finally approve the Parties' settlement, the Amended Consolidated Complaint will
14 be deemed withdrawn and the operative complaint in this action will be the initial
15 Complaint filed in this action on January 6, 2023.
- 16 4. Plaintiffs shall file a motion for preliminary approval of the Settlement within thirty
17 (30) days of the date the Court enters an Order approving this Stipulation.

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1 **IT IS SO STIPULATED.**

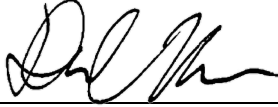
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3 DATED: January 23, 2024

JONES DAY

4 By: /s/ Koree Wooley
5 KOREE WOOLEY
6 Attorneys for Defendant SAPUTO DAIRY
7 FOODS USA, LLC.

8
9
10 DATED: January 23, 2024

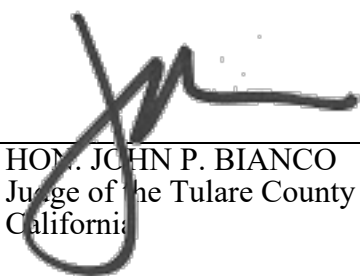
WILSHIRE LAW FIRM

11
12 By: 
13 JUSTIN F. MARQUEZ
14 BENJAMIN H. HABER
15 DANIEL J. KRAMER
16 Attorneys for Plaintiff PSALMS
17 MARTINEZ

[PROPOSED] ORDER

Having considered the Joint Stipulation between all Parties, and good cause appearing,
IT IS SO ORDERED.

Dated: 01/26/2024



HON. JOHN P. BIANCO
Judge of the Tulare County Superior Court of
California

Exhibit A

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Additional counsel listed on next page

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TULARE

PSALMS MARTINEZ, NATALY LOPEZ
VARGAS, and JUAN ROMERO on behalf of
themselves individually and on behalf of all
persons similarly situated, and the State of
California and other aggrieved persons,

Plaintiff,

vs.

SAPUTO DAIRY FOODS USA, LLC, a limited
liability corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. VCU294960

**AMENDED CLASS AND PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

1. Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
2. Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order;
3. Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order;
4. Failure to Pay Overtime Wages in Violation of Cal. Lab. Code § 510, 1194, 1198;

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5. Failure to Pay Minimum and Straight Time Wages in Violation of Cal. Lab. Code §§ 204, 1194, 1194.2, 1197 & 1197.1;
6. Failure to Pay All Wages Due to Discharged and Quitting Employees in Violation of Cal. Lab. Code §§ 201, 202, 203, 227.3;
7. Failure to Furnish Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226 and the Applicable IWC Wage Order;
8. Failure to Maintain Required Records in Violation of Cal. Lab. Code §§ 226 & 1174 and the Applicable IWC Wage Order;
9. Failure to Reimburse Employees for Necessary Expenses in Violation of Cal. Lab. Code § 2802;
10. Failure to Provide Suitable Seating in Violation of Cal. Lab. Code § 1198 and the applicable IWC Wage Order;
11. Failure to Pay Sick Wages in Violation of Cal. Lab Code §§ 201- 204, 233, 246; and
12. Representative Action for Civil Penalties under Cal. Lab. Code §§ 2698–2699.5.

DEMAND FOR JURY TRIAL

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1 6. PLAINTIFFS bring this action on behalf of themselves and a California class,
2 defined as all individuals who are or previously were employed by DEFENDANT in California,
3 and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
4 period beginning on May 6, 2018 and ending on the date as determined by the Court (the
5 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
6 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

7 7. PLAINTIFFS, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, further bring a Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by DEFENDANT in
11 California, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
12 time period of September 15, 2021 until a date as determined by the Court (the "PAGA
13 PERIOD").

14 8. PLAINTIFFS bring this Class Action on behalf of themselves and a
15 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
16 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and
17 practice which failed to lawfully compensate these employees. DEFENDANT's policy and
18 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
19 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members
20 of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
21 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
22 named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
23 economically injured by DEFENDANT's past and current unlawful conduct, and all other
24 appropriate legal and equitable relief.

25 9. PLAINTIFFS are informed and believe, and thereon allege, that Defendant
26 SAPUTO DAIRY FOODS, is, and at all times relevant hereto was, a Delaware limited liability
27 company. PLAINTIFFS are further informed and believe, and thereon allege, that Defendant
28 SAPUTO DAIRY FOODS is authorized to conduct business in the State of California, and does

1 conduct business in the State of California. Specifically, Defendant SAPUTO DAIRY FOODS
2 maintains offices and facilities and conducts business in, and engages in illegal payroll practices
3 or policies in, the State of California.

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

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

21 **THE CONDUCT**

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

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

18 13. State and federal law provides that employees must be paid overtime at one-and-
19 one-half times their "regular rate of pay" and meal and rest break premiums at their "regular rate
20 of pay." PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an hourly
21 rate plus incentive pay that is tied to specific elements of an employee's performance, and receive
22 other forms of nondiscretionary compensation. However, when calculating the regular rate of pay
23 in order to pay overtime and meal and rest break premiums to PLAINTIFFS and other
24 CALIFORNIA CLASS Members, DEFENDANT failed to include all nondiscretionary
25 compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime
26 pay and meal and rest break premium pay. Management and supervisors described the incentive
27 program to potential and new employees as part of the compensation package. As a matter of
28 law, the incentive compensation and other forms of nondiscretionary compensation received by

1 PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the “regular rate of
2 pay.” The failure to do so has resulted in a underpayment of overtime compensation and meal and
3 rest break premiums and sick pay to PLAINTIFFS and other CALIFORNIA CLASS Members by
4 DEFENDANT.

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

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

1 employers authorize and permit all employees to take rest period means that employers must
2 relieve employees of all duties and relinquish control over how employees spend their time which
3 includes control over the locations where employees may take their rest period. Employers
4 cannot impose controls that prohibit an employee from taking a brief walk—five minutes out, five
5 minutes back. Here, DEFENDANT’s policy restricts PLAINTIFFS and other CALIFORNIA
6 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT’s rule
7 which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the work
8 premises during their rest period. Moreover, DEFENDANT failed to authorize and permit
9 PLAINTIFFS and CALIFORNIA CLASS Members to take their rest breaks in the middle of each
10 work period insofar as practicable.

11 16. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
12 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of
13 time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
14 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
15 all time worked, meaning the time during which an employee was subject to the control of an
16 employer, including all the time the employee was permitted or suffered to permit this work.
17 DEFENDANT requires these employees to work off the clock without paying them for all the
18 time they are under DEFENDANT’s control. DEFENDANT required PLAINTIFFS and the
19 CALIFORNIA CLASS to work “off-the-clock”, uncompensated, by, for example, requiring
20 PLAINTIFFS and the CALIFORNIA CLASS to perform work during meal periods and before
21 clocking in for the workday, attend scheduled safety and other meetings from time to time
22 without being provided payment, submit to drug and alcohol testing without payment, and
23 requiring PLAINTIFFS and CALIFORNIA CLASS members to drop off dirty uniforms to be dry
24 cleaned per company policy prior to clocking in. As such, DEFENDANT knew or should have
25 known that PLAINTIFFS and the other members of the CALIFORNIA CLASS are under-
26 compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS
27 Members forfeit time worked by working without their time being accurately recorded and
28 without compensation at the applicable minimum wage and overtime wage rates. To the extent

1 that the time worked off the clock does not qualify for overtime premium payment,
2 DEFENDANT fails to pay minimum and straight time wages for the time worked off-the-clock in
3 violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

27 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
28 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are

1 paid not more than seven calendar days following the close of the payroll period. Cal. Lab. Code
2 § 210 provides:

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

10 19. DEFENDANT from time to time fails to pay PLAINTIFFS and other
11 CALIFORNIA CLASS Members within seven (7) days of the close of the payroll period in
12 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Other” regular wage
13 payment.

14 20. DEFENDANT underpays sick pay wages to PLAINTIFFS and other
15 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
16 violation of Cal. Lab. Code § 246. Specifically, PLAINTIFFS and other non-exempt employees
17 earn non-discretionary remuneration, including but not limited to, incentives, shift differential
18 pay, and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays
19 sick pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

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

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

23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and
other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting

1 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and
2 believe and based thereon allege that such failure to pay sick pay at regular rate was willful, such
3 that PLAINTIFFS and members of the CALIFORNIA CLASS whose employment has separated
4 are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

5 24. The employment of some CALIFORNIA CLASS members has terminated and
6 DEFENDANT has not tendered payment of all wages owed as required by law. Additionally, at
7 all times during the term of PLAINTIFFS' employment with DEFENDANT, the CALIFORNIA
8 CLASS earned and accrued vested vacation and holiday time on the date of their termination
9 pursuant to DEFENDANT's uniform vacation policies and applicable California law. The
10 amount of vacation pay PLAINTIFFS and the other CALIFORNIA CLASS Members earned and
11 accumulated is evidenced by DEFENDANT's business records. Additionally, DEFENDANT
12 also underpaid accrued vested vacation wages to CALIFORNIA CLASS Members by failing to
13 pay such wages at the regular rate of pay and more specifically the final rate of pay that included
14 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular rate
15 of pay, DEFENDANT underpaid vacation wages to the CALIFORNIA CLASS Members at their
16 base rates of pay, instead of including all of the CALIFORNIA CLASS Members' non-
17 discretionary incentive compensation into the vacation wage payment calculations.
18 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
19 PLAINTIFFS and other CALIFORNIA CLASS Members would be paid vacation upon leaving
20 employment with DEFENDANT. As a result of DEFENDANT's unlawful practice, policy and
21 procedure to deny paying the CALIFORNIA CLASS Members all of their vested vacation and
22 holiday time, DEFENDANT failed to pay the CALIFORNIA CLASS all vested vacation time as
23 wages due upon employment termination, in violation of the California Labor Code, Sections
24 201, 202, 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to the
25 CALIFORNIA CLASS Members at their base rates of pay, instead of including all of the
26 CALIFORNIA CLASS members' non-discretionary compensation into the waiting time penalty
27 calculations. This failure by DEFENDANT is believed to be the result of DEFENDANT's
28 unlawful, unfair and deceptive refusal to provide compensation for earned, accrued and vested

1 vacation and holiday time, as well as the corresponding waiting time penalties that were paid.
2 DEFENDANT perpetrated this unlawful, unfair and deceptive practice to the detriment of
3 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANT's uniform practice
4 and policy of failing to pay the CALIFORNIA CLASS for all vested vacation and holiday time
5 accumulated at employment termination violated and continues to violate Section 227.3 of the
6 California Labor Code.

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

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

27 27. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
28 Members as a business expense, are required by DEFENDANT to use their own personal cellular

1 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are
2 not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their
3 personal cellular phones for DEFENDANT's benefit. Further, in the course of their employment
4 with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA CLASS incurred
5 unreimbursed business expenses which included, but were not limited to, costs related to the use
6 of their personal cellular phones, expenses for tools, costs related to personal protective
7 equipment, and other employment-related expenses, all on behalf of and for the benefit of
8 DEFENDANT.

9 28. Specifically as to PLAINTIFFS, DEFENDANT fails to provide all the legally
10 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage Order
11 and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due to
12 PLAINTIFFS. DEFENDANT does not have a policy or practice which provided timely off-duty
13 meal and rest breaks to PLAINTIFFS and also fails to compensate PLAINTIFFS for
14 PLAINTIFFS' missed meal and rest breaks. The nature of the work performed by the
15 PLAINTIFFS does not prevent PLAINTIFFS from being relieved of all of their duties for the
16 legally required off-duty meal periods. DEFENDANT's failure to provide PLAINTIFFS with the
17 legally required meal periods is evidenced by DEFENDANT's business records.

18 29. In violation of the applicable sections of the California Labor Code and the
19 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
20 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
21 and systematically failed to provide PLAINTIFFS and the other AGGRIEVED EMPLOYEES
22 suitable seating when the nature of these employees' work reasonably permitted sitting.

23 30. DEFENDANT knew or should have known that PLAINTIFFS and other
24 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when it
25 did not interfere with the performance of their duties, and that DEFENDANT did not provide
26 suitable seating and/or did not allow them to sit when it did not interfere with the performance of
27 their duties.

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31. By reason of this conduct applicable to PLAINTIFFS and all AGGRIEVED EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order 8-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties on behalf of PLAINTIFFS and other AGGRIEVED EMPLOYEES as provided herein. Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT violated the California Labor Code and regulations promulgated thereunder as herein alleged.

32. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, after properly exhausting their administrative requirements as set forth in more detail below, further bring a representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's violation of Labor Code §§ 201, 202, 203, 204 *et seq.*, 206.5, 210, 218, 218.5, 221, 225.5, 226, 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 558.1, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2699, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.* All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

THE CALIFORNIA CLASS

33. PLAINTIFFS bring 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

1 on May 5, 2018 and ending on the date as determined by the Court (the “CALIFORNIA CLASS
2 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
3 Members is under five million dollars (\$5,000,000.00).

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

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

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

23 37. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

25 38. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
26 law by:

- 27 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
28 Code §§ 17200, *et seq.* (the “UCL”), by unlawfully, unfairly and/or

1 deceptively having in place company policies, practices and procedures
2 that failed to record and pay PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS for all time worked, including minimum wages
4 owed, overtime wages, and reporting time wages owed for work performed
5 by these employees; and,

- 6 b. Committing an act of unfair competition in violation of the UCL, by failing
7 to provide the PLAINTIFFS and the other members of the CALIFORNIA
8 CLASS with the legally required meal and rest periods.

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

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

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

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

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

15 1) Inconsistent or varying adjudications with respect to individual
16 members of the CALIFORNIA CLASS which would establish
17 incompatible standards of conduct for the parties opposing the
18 CALIFORNIA CLASS; and/or,

19 2) Adjudication with respect to individual members of the
20 CALIFORNIA CLASS which would as a practical matter be
21 dispositive of interests of the other members not party to the
22 adjudication or substantially impair or impede their ability to
23 protect their interests.

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

1 1) With respect to the First Cause of Action, the final relief on behalf
2 of the CALIFORNIA CLASS sought does not relate exclusively to
3 restitution because through this claim PLAINTIFFS seek
4 declaratory relief holding that the DEFENDANT's policy and
5 practices constitute unfair competition, along with declaratory
6 relief, injunctive relief, and incidental equitable relief as may be
7 necessary to prevent and remedy the conduct declared to constitute
8 unfair competition;

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

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

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

24 (i) Inconsistent or varying adjudications with respect to
25 individual members of the CALIFORNIA CLASS, which
26 would establish incompatible standards of conduct for the
27 DEFENDANT; and/or,
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- (ii) Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

41. 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 CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are 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;

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

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

THE CALIFORNIA LABOR SUB-CLASS

43. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California, and classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning on May 6, 2019 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

16 48. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
17 under California law by, *inter alia*:

- 18 a. Violating Cal. Lab. Code § 510, by failing to correctly pay the
19 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
20 CLASS all wages due for overtime worked, for which DEFENDANT is
21 liable pursuant to Cal. Lab. Code § 1194;
- 22 b. Violating Cal. Lab. Code §§ 221, 218.5, 1194, 1182.12, 1197 & 1197.1 *et*
23 *seq.*, by failing to accurately pay PLAINTIFFS and the members of the
24 CALIFORNIA LABOR SUB-CLASS the correct minimum wage, straight
25 time pay, and/or reporting time pay for which DEFENDANT is liable
26 pursuant to Cal. Lab. Code §§ 218.5, 1194 and 1197;
- 27 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
28 members of the CALIFORNIA LABOR SUB-CLASS with an accurate

1 itemized statement in writing showing the corresponding correct amount of
2 wages earned by the employee;

- 3 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
4 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
5 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
6 meal breaks and the legally required off-duty rest breaks;
- 7 e. Violating Cal. Lab. Code §§201, 202, 203, 227.3, which require that when
8 an employee is discharged or quits from employment, the employer must
9 pay the employee all wages due without abatement, by failing to tender full
10 payment and/or restitution of accrued wages, including vested vacation
11 accruals, and other compensation owed or in the manner required by
12 California law to the members of the CALIFORNIA LABOR SUB-
13 CLASS who have terminated their employment; and,
- 14 f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS 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 § 1198, Wage Order 8-2001, § 14 by failing to
18 provide suitable seating for PLAINTIFFS and other members of the
19 CALIFORNIA LABOR SUB-CLASS.

20 49. This Class Action meets the statutory prerequisites for the maintenance of a Class
21 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
23 so 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

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

c. The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, were non-exempt employees paid on an hourly basis who were subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,

d. The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and have retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS 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.

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

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

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- 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 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due, including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-

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CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - (i) 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,
 - (ii) 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;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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- 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. PLAINTIFFS, 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;

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- 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 who worked for DEFENDANT in California at any time
5 during the 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
8 related claims arising out of the conduct of DEFENDANT as to the
9 members of the CALIFORNIA LABOR SUB-CLASS.

10 **FIRST CAUSE OF ACTION**

11 **Unlawful Business Practices**

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

13 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

1 55. 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, the
3 applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor
4 Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and
5 the Fair Labor Standards Act and federal regulations promulgated thereunder, for which this
6 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
7 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
8 competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

12 **SECOND CAUSE OF ACTION**

13 **Failure to Provide Required Meal Periods**

14 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No, 8-2001, § 11]**

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

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

19 68. Throughout the statutory period, DEFENDANT wrongfully failed to provide
20 PLAINTIFFS and the CALIFORNIA CLASS MEMBERS with legally compliant meal periods.
21 DEFENDANT regularly required PLAINTIFFS and the CLASS MEMBERS to work in excess of
22 five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal
23 period for every five hours of work, or without compensating PLAINTIFFS and the CLASS for
24 meal periods that were not provided by the end of the fifth hour of work or tenth hour of work.
25 Instead, DEFENDANT continued to assert control over PLAINTIFFS and the CLASS by
26 requiring, pressuring, or encouraging them to perform work tasks which could not be completed
27 without working in lieu of taking mandatory meal periods, or by denying PLAINTIFFS and the
28 CLASS permission to take a meal period. Accordingly, DEFENDANT'S policy and practice was

1 not to provide meal periods to PLAINTIFFS and the CLASS MEMBERS in compliance with
2 California law.

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

19 70. DEFENDANT further violated California Labor Code §§ 226.7 and IWC Wage
20 Order No. 8-2001, § 11 by failing to compensate PLAINTIFFS and CALIFORNIA LABOR
21 SUB-CLASS Members who were not provided with a meal period, in accordance with the
22 applicable wage order, one additional hour of compensation at each employee's regular rate of
23 pay for each workday that a meal period was not provided.

24 71. DEFENDANT further violated California Labor Code §§ 226.7, 510, 1194, 1197,
25 and IWC Wage Order No. 8-2001 by failing to compensate PLAINTIFFS and CALIFORNIA
26 LABOR SUB-CLASS Members for all hours worked during their meal periods.

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

4 **THIRD CAUSE OF ACTION**

5 **Failure to Provide Required Rest Periods**

6 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 8-2001, § 12]**

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Against All Defendants)**

8 73. PLAINTIFFS, 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 74. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
12 from time to time required to work in excess of four (4) hours without being provided ten (10)
13 minute rest periods. Further, these employees from time to time were denied their first rest
14 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a
15 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6)
16 and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
17 shifts worked of ten (10) hours or more from time to time. Moreover, DEFENDANT failed to
18 authorize and permit PLAINTIFFS and CALIFORNIA CLASS Members to take their rest breaks
19 in the middle of each work period insofar as practicable. Here, DEFENDANT's policy restricts
20 PLAINTIFFS and other CALIFORNIA CLASS Members from unconstrained walks and is
21 unlawful based on DEFENDANT's rule which states PLAINTIFFS and other CALIFORNIA
22 CLASS Members cannot leave the work premises during their rest period. PLAINTIFFS and
23 other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour
24 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
25 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
26 periods by DEFENDANT and DEFENDANT's managers.

27 75. DEFENDANT further violated California Labor Code § 226.7 and IWC Wage
28 Order No. 8-2001, § 12 by failing to pay PLAINTIFFS and CALIFORNIA LABOR SUB-

1 CLASS Members who were not provided with a rest period, in accordance with the applicable
2 wage order, one additional hour of compensation at each employee's regular rate of pay for each
3 workday that a rest period was not provided.

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

7 **FOURTH CAUSE OF ACTION**

8 **Failure to Pay Overtime Wages**

9 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 8-2001, § 3]**

10 **(By PLAINTIFFS and the CALIFORNIA LABOR-SUB CLASS Against all Defendants)**

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

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

19 79. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 8-
20 2001, § 3, DEFENDANTS are required to compensate PLAINTIFFS and CALIFORNIA CLASS
21 MEMBERS for all overtime, which is calculated at one and one-half (1 ½) times the regular rate
22 of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week,
23 and for the first eight (8) hours on the seventh consecutive workday, with double time for all
24 hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of
25 eight (8) hours on the seventh consecutive day of work in any workweek.

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

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

5 82. PLAINTIFFS and CALIFORNIA CLASS MEMBERS are current and former
6 non-exempt employees entitled to the protections of California Labor Code §§ 510, 1194, and
7 IWC Wage Order No. 8-2001. During the CLASS PERIOD, DEFENDANTS failed to
8 compensate PLAINTIFFS and CALIFORNIA CLASS MEMBERS for all overtime hours worked
9 as required under the foregoing provisions of the California Labor Code and IWC Wage Order
10 by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular
11 rate of pay as provided by California Labor Code §§ 510, 1194, and IWC Wage Order No. 8-
12 2001, § 3; requiring, permitting or suffering PLAINTIFFS and CALIFORNIA CLASS
13 MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFFS and
14 CALIFORNIA CLASS MEMBERS to work through meal and rest breaks; illegally and
15 inaccurately recording time in which PLAINTIFFS and CALIFORNIA CLASS MEMBERS
16 worked; failing to properly maintain PLAINTIFFS' and CALIFORNIA CLASS MEMBERS'
17 records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period;
18 and other methods to be discovered.

19 83. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and CALIFORNIA
20 LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT to work
21 for DEFENDANT and were not paid for all the time they worked, including overtime work.

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

1 85. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
3 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT acted
4 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
5 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
6 laws and regulations.

7 86. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
9 full compensation for overtime worked.

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

18 88. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and the other members
19 of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that they
20 are entitled to, constituting a failure to pay all earned wages.

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

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

7 91. DEFENDANT knew or should have known that PLAINTIFFS and the other
8 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
9 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to
10 not pay employees for their labor as a matter of company policy, practice and procedure, and
11 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
12 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

1 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was
2 willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA
3 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

4 **FIFTH CAUSE OF ACTION**

5 **Failure to Pay Minimum and Straight Time Wages**

6 **[Cal Labor Code §§ 204, 218.5, 218.6, 1182.12, 1194, 1194.2, 1197; IWC Wage Order No. 8-**
7 **2001, § 4]**

8 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Against all Defendants)**

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

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

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

19 97. 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 less wage than
21 the minimum so fixed is unlawful.

22 98. 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 99. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and
25 CALIFORNIA CLASS MEMBERS minimum wages for all hours worked by, among other
26 things: requiring, permitting or suffering PLAINTIFFS and CALIFORNIA CLASS MEMBERS
27 to work off the clock; requiring, permitting or suffering PLAINTIFFS and CALIFORNIA
28 CLASS MEMBERS to work through meal and rest breaks; illegally and inaccurately recording

1 time in which PLAINTIFFS and CALIFORNIA CLASS MEMBERS worked; failing to properly
2 maintain PLAINTIFFS' and CALIFORNIA CLASS MEMBERS' records; failing to provide
3 accurate itemized wage statements to PLAINTIFFS and CALIFORNIA CLASS MEMBERS for
4 each pay period; and other methods to be discovered.

5 100. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
6 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
7 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
8 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
9 CALIFORNIA LABOR SUB-CLASS.

10 101. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
11 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a
12 policy and practice that denies accurate compensation to PLAINTIFFS and the other members of
13 the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

20 103. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
21 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
22 the correct minimum wage compensation for their time worked for DEFENDANT.

23 104. During the CALIFORNIA CLASS PERIOD, DEFENDANT required, permitted
24 or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members to work without
25 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA
26 CLASS PERIOD, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all
28 earned wages.

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

7 106. DEFENDANT knew or should have known that PLAINTIFFS and the other
8 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
9 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to
10 not pay employees for their labor as a matter of company policy, practice and procedure, and
11 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
12 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

1 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
2 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further,
3 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and
4 recover statutory costs.

5 **SIXTH CAUSE OF ACTION**

6 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

7 **[Cal. Labor Code §§ 201, 202, 203, 227.3]**

8 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Against all Defendants)**

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

12 110. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if
13 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
14 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
15 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
16 unless the employee has given seventy-two (72) hours previous notice of his or her intention to
17 quit, in which case the employee is entitled to his or her wages at the time of quitting.

18 111. Within the applicable statute of limitations, the employment of at least one of the
19 PLAINTIFFS and many other members of the CALIFORNIA LABOR SUB-CLASS ended, i.e.
20 was legally terminated, and the employment of others will be. However, during the relevant time
21 period, DEFENDANT failed, and continue to fail to pay terminated CALIFORNIA LABOR
22 SUB-CLASS Members, without abatement, all accrued wages and other compensation required
23 to be paid by California Labor Code §§ 201 and 202 either at the time of discharge, or within
24 seventy-two (72) hours of their leaving DEFENDANT's employ.

25 112. Additionally, DEFENDANT failed to pay the CALIFORNIA LABOR SUB-
26 CLASS Members the full amount of vested vacation and holiday time that they were owed on the
27 date of their separation from employment pursuant to DEFENDANT's uniform vacation policies
28 and applicable California law. DEFENDANT's uniform practice and policy of failing to pay the

1 CALIFORNIA LABOR SUB-CLASS for all vested vacation and holiday time accumulated at
2 employment termination violated and continues to violate Section 227.3 of the California Labor
3 Code.

4 113. DEFENDANT's failure to pay those CALIFORNIA LABOR SUB-CLASS
5 Members who are no longer employed by DEFENDANT their wages earned and unpaid at the
6 time of discharge, or within seventy-two (72) hours of their leaving DEFENDANT's employ, is
7 in violation of California Labor Code §§ 201, 202 and 227.3.

8 114. California Labor Code § 203 provides that if an employer willfully fails to pay
9 wages owed, in accordance with §§ 201, 202, and 227.3, then the wages of the employee shall
10 continue as a penalty wage from the due date, and at the same rate until paid or until an action is
11 commenced; but the wages shall not continue for more than thirty (30) days.

12 115. The CALIFORNIA LABOR SUB-CLASS is entitled to recover from
13 DEFENDANT their additionally accruing wages for each day they were not paid, at their regular
14 hourly rate of pay, up to thirty (30) days maximum pursuant to California Labor Code § 203.

15 116. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, the CALIFORNIA
16 LABOR SUB-CLASS is also entitled to an award of reasonable attorneys' fees, interest,
17 expenses, and costs incurred in this action.

18 **SEVENTH CAUSE OF ACTION**

19 **Failure to Furnish Accurate Itemized Wage Statements**

20 **[Cal. Labor Code §§ 226; IWC Wage Order No. 8-2001, § 7]**

21 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Against all Defendants)**

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

25 118. At all material times set forth herein, California Labor Code § 226(a) provides that
26 every employer shall furnish each of his or her employees an accurate itemized wage statement in
27 writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
28 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate

1 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
2 on written orders of the employee may be aggregated and shown as one item, (5) net wages
3 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
4 employee and the last four digits of his or her social security number or an employee
5 identification number other than a social security number, (8) the name and address of the legal
6 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
7 the corresponding number of hours worked at each hourly rate by the employee.

8 119. During the CLASS PERIOD, DEFENDANT routinely failed to provide
9 PLAINTIFFS and CALIFORNIA CLASS MEMBERS with timely, accurate, and itemized wage
10 statements in writing showing each employee's gross wages earned, total hours worked, the
11 number of piece-rate units earned and any applicable piece rate, all deductions made, net wages
12 earned, the name and address of the legal entity or entities employing PLAINTIFFS and
13 CALIFORNIA CLASS MEMBERS, the inclusive dates of the period for which the employee is
14 paid, only the last four digits of the employees social security number or an employee
15 identification number other than a social security number, and all applicable hourly rates in effect
16 during each pay period and the corresponding number of hours worked at each hourly rate, in
17 violation of California Labor Code § 226 and IWC Wage Order No. 8-2001, § 7.

18 120. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
19 employees with an accurate itemized wage statement in writing showing, among other things,
20 gross wages earned and all applicable hourly rates in effect during the pay period and the
21 corresponding amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA
22 LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements
23 should reflect all applicable hourly rates during the pay period and the total hours worked, and the
24 applicable pay period in which the wages were earned pursuant to California Labor Code Section
25 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and other CALIFORNIA
26 LABOR SUB-CLASS Members failed to identify such information. More specifically, the wage
27 statements failed to identify the accurate total hours worked each pay period. When the hours
28 shown on the wage statements were added up, they did not equal the actual total hours worked

1 during the pay period in violation of Cal. Lab. Code 226(a)(2). Additionally, DEFENDANT
2 violates Cal. Lab. Code 226(a)(8) by failing to list the correct name of the legal entity that
3 employs PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members. Aside, from
4 the violations listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFFS an
5 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
6 As a result, DEFENDANT from time to time provides PLAINTIFFS and the other members of
7 the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
8 §226.

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

20 **EIGHTH CAUSE OF ACTION**

21 **Failure to Maintain Required Records**

22 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 8-2001, § 7]**

23 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Against all Defendants)**

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

27 123. During the CLASS PERIOD, as part of DEFENDANT's illegal payroll policies
28 and practices to deprive PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members of all

1 wages earned and due, DEFENDANT knowingly and intentionally failed to maintain records as
2 required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 8-2001, § 7,
3 including but not limited to the following records: total daily hours worked by each employee;
4 applicable rates of pay; all deductions; meal periods; time records showing when each employee
5 begins and ends each work period; and accurate itemized statements.

6 124. As a proximate result of DEFENDANT's unlawful actions and omissions,
7 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an
8 amount according to proof at trial, and are entitled to all wages earned and due, plus interest
9 thereon. Additionally, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members are
10 entitled to all available statutory penalties, including but not limited to civil penalties pursuant to
11 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
12 reasonable attorneys' fees, including but not limited to those provided in California Labor Code §
13 226(e), as well as other available remedies.

14 **NINTH CAUSE OF ACTION**

15 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of** 16 **Duties**

17 **[Cal. Labor Code § 2802]**

18 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Against all Defendants)**

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

22 126. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

28 127. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS

1 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
2 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
3 CLASS members for expenses which included, but were not limited to, expenses for tools,
4 personal protective equipment, cell phone usage, and other employment-related expenses, in
5 violation of California Labor Code § 2802. PLAINTIFFS and other CALIFORNIA LABOR
6 SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones in
7 order to perform work related job tasks. DEFENDANT's policy and practice was to not
8 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses
9 resulting from using their personal cellular phones for DEFENDANT within the course and scope
10 of their employment for DEFENDANT. These expenses were necessary to complete their
11 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver
12 of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
13 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
14 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these
15 expenses as an employer is required to do under the laws and regulations of California.

16 128. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred
17 by themselves and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their
18 job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
19 at the statutory rate and costs under Cal. Lab. Code § 2802.

20 **TENTH CAUSE OF ACTION**

21 **Failure to Provide Suitable Seating**

22 **[Cal. Lab. Code § 1198, Wage Order 8-2001, § 14, Cal. Code Regs., tit. 8, § 11070(14)(A)]**

23 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Against all Defendants)**

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

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

1 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
2 and systematically failed to provide PLAINTIFFS and the other CALIFORNIA LABOR SUB-
3 CLASS Members suitable seating when the nature of these employees' work reasonably
4 permitted sitting.

5 131. DEFENDANT knew or should have known that PLAINTIFFS and other
6 CALIFORNIA LABOR SUB-CLASS Members were entitled to suitable seating and/or were
7 entitled to sit when it did not interfere with the performance of their duties, and that
8 DEFENDANT did not provide suitable seating and/or did not allow them to sit when it did not
9 interfere with the performance of their duties.

10 132. By reason of this conduct applicable to PLAINTIFFS and CALIFORNIA LABOR
11 SUB-CLASS Members, DEFENDANT violated California Labor Code Section 1198 and Wage
12 Order 8-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties on
13 behalf of PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members as provided
14 herein. Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
15 intentional disregard of the obligation to meet this burden, DEFENDANT violated the California
16 Labor Code and regulations promulgated thereunder as herein alleged.

17 **ELEVENTH CAUSE OF ACTION**

18 **Failure to Pay Sick Wages**

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

20 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Against All Defendants)**

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

24 134. Cal Lab. Code § 233 provides that an employer must permit an employee to use
25 accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate
26 of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for
27 use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick
28 leave is used as paid sick time, an employee has a vested right to sick pay wages, which an

1 employer must calculate and compensate based on one of two calculations: (i) “Paid sick time for
2 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
3 workweek in which the employee uses paid sick time, whether or not the employee actually
4 works overtime in that workweek,” or (ii) “Paid sick time for nonexempt employees shall be
5 calculated by dividing the employee’s total wages, not including overtime premium pay, by the
6 employee’s total hours worked in the full pay periods of the prior 90 days of employment.” Under
7 Cal Lab. Code §§ 218 and 233, employees may sue to recover underpaid sick pay wages as
8 damages.

9 135. As a matter of policy and practice, DEFENDANT pays sick pay wages to
10 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the
11 incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-
12 CLASS regularly use accrued sick leave in the workweeks in which they also earn non-hourly
13 remuneration. As a matter of policy and practice, DEFENDANT pays sick pay wages to
14 PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS at the base
15 hourly pay, as opposed to the regular rate of pay, which would consider all non-hourly
16 remuneration in addition to base hourly wages, or the rate resulting from dividing the employee’s
17 total wages, not including overtime premium pay, by the employee’s total hours worked in the
18 full pay periods of the prior 90 days of employment. As a result, DEFENDANT underpaid sick
19 pay wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS.

20 136. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
21 during each calendar month and are to be paid no later than the payday for the next regular
22 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires
23 that, upon use of accrued sick leave, vested sick pay wages are due and to be paid no later than
24 the payday for the next regular payroll period after accrued sick leave is used as paid sick time.
25 Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an employee, wages
26 earned and unpaid at the time of discharge are due and payable immediately. Cal. Lab. Code §
27 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after
28 an employee quits his or her employment, unless the employee has given 72-hour notice of his or

1 her intention to quit, in which case the employee is entitled to his or her wages at the time of
2 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
3 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab. Code
4 §§ 201-202, then the wages of the employee shall continue as a penalty from the due date, and at
5 the same rate until paid, but the wages shall not continue for more than thirty (30) days.
6 Likewise, Cal. Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and
7 untimely payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees
8 may sue to recover applicable penalties.

9 137. As alleged herein and as a matter of policy and practice, DEFENDANT routinely
10 underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other members of
11 the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result,
12 DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code
13 provisions. PLAINTIFFS are informed and believe that DEFENDANT was advised by skilled
14 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to
15 PLAINTIFFS' allegations, especially since the California Supreme Court has explained that
16 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is
17 entitled as a part of his or her compensation, including money, room, board, clothing, vacation
18 pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)
19 (emphasis added). Because DEFENDANT willfully fails to timely pay PLAINTIFFS and the
20 other members of the CALIFORNIA LABOR-SUB-CLASS all sick pay wages due,
21 DEFENDANT is subject to applicable penalties.

22 138. Such a pattern, practice, and uniform administration of corporate policy is
23 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-
24 CLASS to underpaid sick pay wages, including interest thereon, applicable penalties, attorney's
25 fees, and costs of suit.

26 **TWELFTH CAUSE OF ACTION**

27 **Representative Action for Civil Penalties**

1 **[Cal. Labor Code §§ 2698–2699.5]**

2 **(By PLAINTIFFS Against All Defendants)**

3 139. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
4 herein, the prior paragraphs of this Complaint.

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

14 141. On September 17, 2022, Vargas gave written notice by electronic mail to the
15 Labor and Workforce Development Agency (the “Agency”) and by certified mail to the
16 DEFENDANT of the specific provisions of this code alleged to have been violated as required by
17 Labor Code § 2699.3. On October 31, 2022, Martinez gave written notice by electronic mail to
18 the Agency and by certified mail to DEFENDANT of the specific provisions of this code alleged
19 to have been violated as required by Labor Code § 2699.3. On January 24, 2023, Romero gave
20 written notice by electronic mail to the Agency and by certified mail to the employer of the
21 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
22 More than sixty-five (65) days has elapsed since PLAINTIFFS provided notice, but the Agency
23 has not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the
24 notices. As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a
25 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
26 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

27 142. The policies, acts and practices heretofore described were and are an unlawful
28 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the

1 AGGRIEVED EMPLOYEES accurate itemized wage statements and failed to maintain required
2 records, (b) failed to properly record and provide legally required meal and rest periods, (c) failed
3 to pay minimum wages, (d) failed to pay overtime wages, sick pay wages, and reporting time
4 wages, (e) failed to reimburse employees for required expenses, (f) failed to provide suitable
5 seating, and (g) failed to timely pay all accrued wages and other compensation during
6 employment and at termination of employment, all in violation of the applicable Labor Code
7 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 206.5, 210, 221, 225.5, 226.3, 226,
8 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 558.1, 1174.5, 1182.12, 1194, 1197, 1197.1,
9 1198, 1199, 2699, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision
10 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating),
11 and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
12 conduct. PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor Code
13 Private Attorney General Act of 2004 as the representatives of the State of California for the
14 illegal conduct perpetrated on PLAINTIFFS and the AGGRIEVED EMPLOYEES.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
17 severally, as follows:

18 1. On behalf of the CALIFORNIA CLASS:

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

- 1 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 2 i. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
- 3 Ninth, Tenth, and Eleventh Causes of Action asserted by the CALIFORNIA
- 4 LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 5 ii. Compensatory damages, according to proof at trial, including compensatory
- 6 damages for minimum, overtime and sick pay compensation due PLAINTIFFS
- 7 and the other members of the CALIFORNIA LABOR SUB-CLASS, during the
- 8 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
- 9 the statutory rate;
- 10 iii. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
- 11 which a violation occurs and one hundred dollars (\$100) per each member of the
- 12 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 13 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 14 an award of costs for violation of Cal. Lab. Code § 226;
- 15 iv. Meal and rest period compensation pursuant to Cal. Lab. Code § § 226.7, 512 and
- 16 the applicable IWC Wage Order;
- 17 v. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 18 1197; and,
- 19 vi. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
- 20 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
- 21 costs of suit.
- 22 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 23 i. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
- 24 General Act of 2004; and,
- 25 ii. An award of attorneys' fees and cost of suit, as allowable under the law, including,
- 26 but not limited to, pursuant to Labor Code §2699.
- 27 4. On all claims:
- 28 i. An award of interest, including prejudgment interest at the legal rate;

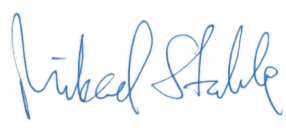
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- ii. Such other and further relief as the Court deems just and equitable; and,
- iii. An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §§ 221, 226, 1194, and/or 2802.

1 DATED: January 23, 2024

Respectfully submitted,

2
3 MATERN LAW GROUP, PC

4
5 By: 

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MIKAEL H. STAHL
IRINA A. KIRNOVA

7 Attorneys for Plaintiff
8 NATALY LOPEZ VARGAS, individually
9 and on behalf of all others similarly situated,
10 and on behalf of the state of California

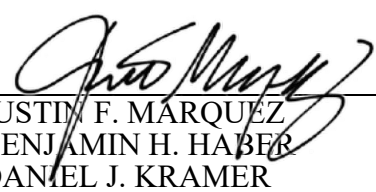
11 BLUMENTHAL NORDREHAUG BHOWMIK
12 DE BLOUW LLP

13 By: 

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16 Attorneys for Plaintiff
17 JUAN ROMERO, individually and on
18 behalf of all others similarly situated, and on
19 behalf of the state of California

20 WILSHIRE LAW FIRM

21 By: 

JUSTIN F. MARQUEZ
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DANIEL J. KRAMER

24 Attorneys for Plaintiff
25 PSALMS MARTINEZ, individually and on
26 behalf of all others similarly situated, and on
27 behalf of the state of California
28

DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demand a jury trial with respect to all issues triable of right by jury.

DATED: January 23, 2024

Respectfully submitted,

MATERN LAW GROUP, PC

By:

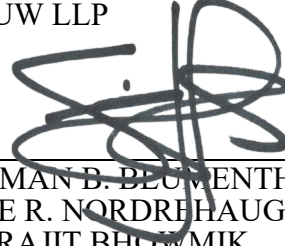


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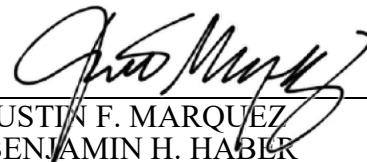


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behalf of the State of California

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By:



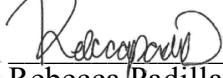
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Attorneys for Plaintiff
PSALMS MARTINEZ, individually and on
behalf of all others similarly situated, and on
behalf of the State of California

1 (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
2 California, by e-mail delivery on the parties listed herein at their most recent known
email address or e-mail of record in this action.

3 I declare under the penalty of perjury under the laws of the State of California, that the
4 foregoing is true and correct.

5 Executed on January 23, 2024, at Los Angeles, California.

6 
Rebecca Padilla