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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

ISAAC RODRIGUEZ, MARIA ALVAREZ, CECILIO
GUZMAN VIVEROS, KATE LOPEZ and GILBERTO
SERRATO MORENO, individuals, on behalf of
themselves and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

FEGHALI FOODS, a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. BCV-23-100142

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

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; and
10. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B), AND THE APPLICABLE WAGE ORDER(s).

DEMAND FOR A JURY TRIAL

1 Plaintiffs Isaac Rodriguez, Maria Alvarez, Cecilio Guzman Viveros, Kate Lopez and Gilberto
2 Serrato Moreno (collectively "PLAINTIFFS"), Individuals, on behalf of themselves and all other similarly
3 situated current and former employees allege on information and belief, except for their own acts and
4 knowledge which are based on personal knowledge, the following.

5 **THE PARTIES**

6 1. Defendant Feghali Foods ("DEFENDANT") is a corporation that at all relevant times
7 mentioned herein conducted and continues to conduct substantial business in the state of California.

8 2. DEFENDANT owns and operates Little Caesars Pizza restaurants across California.

9 3. Plaintiff Isaac Rodriguez was employed by DEFENDANT in California from July of 2021
10 to February 2022. Plaintiff Rodriguez was then re-hired in April of 2022 and let go again on October 5,
11 2022. Plaintiff Maria Alvarez has been employed with DEFENDANT in California since July 17, 2022.
12 Plaintiff Cecilio Guzman Viveros was employed by DEFENDANT in California from April 4, 2022 through
13 March of 2023. Plaintiff Kate Lopez was employed by DEFENDANT in California from January of 2022
14 through October 13, 2023. Plaintiff Gilberto Serrato Moreno was employed by DEFENDANT in California
15 from April 2022 through February of 2023. PLAINTIFFS were at all times classified by DEFENDANT as
16 a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods
17 and payment of minimum and overtime wages due for all time worked.

18 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California class, defined
19 as all individuals who are or previously were employed by DEFENDANT in California, including all
20 individuals who are or previously were employed by Defendant who were classified as non-exempt in the
21 State of California (the "CALIFORNIA CLASS") from February 16, 2020 to a date to be ordered by the
22 Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
23 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

5 6. The true names and capacities, whether individual, corporate, subsidiary, partnership,
6 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS
7 who therefore sue these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474.
8 PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1
9 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and believes, and based upon
10 that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
11 50, inclusive, 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 7. The agents, servants and/or employees of the Defendants and each of them acting on behalf
14 of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or
15 employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the
16 Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally
17 attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and
18 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct
19 of the Defendants' agents, servants and/or employees.

20 **THE CONDUCT**

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

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

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

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

1 The failure to do so has resulted in a underpayment of overtime compensation and meal and rest break
2 premiums to PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANT.

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

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

1 policy restricted PLAINTIFFS and other CALIFORNIA CLASS Members from unconstrained walks and
2 is unlawful based on DEFENDANT's rule which states PLAINTIFFS and other CALIFORNIA CLASS
3 Members cannot leave the work premises during their rest period.

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

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

1 worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed
2 above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists
3 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time
4 provided PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements which
5 violated Cal. Lab. Code § 226.

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

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

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

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

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

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

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

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

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

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

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

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

15 **JURISDICTION AND VENUE**

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

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

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27 **THE CALIFORNIA CLASS**

1 27. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business
2 Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to
3 Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or
4 previously were employed by DEFENDANT in California, including any employees staffed with
5 DEFENDANT by a third party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at
6 any time during the period beginning February 16, 2020 to a date to be ordered by the Court (the
7 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
8 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 1) With respect to the First Cause of Action, the final relief on behalf of the
27 CALIFORNIA CLASS sought does not relate exclusively to restitution
28 because through this claim PLAINTIFFS seeks declaratory relief holding

1 that the DEFENDANT's policy and practices constitute unfair competition,
2 along with declaratory relief, injunctive relief, and incidental equitable
3 relief as may be necessary to prevent and remedy the conduct declared to
4 constitute unfair competition;

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

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

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

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

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

26 3) In the context of wage litigation because a substantial number of individual
27 CALIFORNIA CLASS Members will avoid asserting their legal rights out
28 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.

35. 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;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
6 respect to the CALIFORNIA CLASS as a whole;
- 7 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
8 business records of DEFENDANT; and,
- 9 (i) Class treatment provides manageable judicial treatment calculated to bring a
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANT as to the members of the
12 CALIFORNIA CLASS.

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 37. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
20 Ninth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
21 CLASS who are or previously were employed by DEFENDANT in California, including any employees
22 staffed with DEFENDANT by a third party, and classified as non exempt employees (the "CALIFORNIA
23 LABOR SUB-CLASS") at any time during the period beginning on February 16, 2020 to a date to be
24 ordered by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ.
25 Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
26 Members is under five million dollars (\$5,000,000.00).

27 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission
28 ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally,

1 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
2 compensation for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR
3 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the
4 benefit of this work, required employees to perform this work and permitted or suffered to permit this work.
5 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these
6 employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent
7 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT,
8 the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 18 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
19 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
20 missed meal and rest breaks in violation of the California Labor Code and
21 California regulations and the applicable California Wage Order;
- 22 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other members
23 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
24 statements;
- 25 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed
26 conduct;
- 27 (d) The proper measure of damages and penalties owed to the members of the
28 CALIFORNIA LABOR SUB-CLASS; and,

1 (e) Whether DEFENDANT's conduct was willful.

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

4 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS and
5 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
6 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code §
7 1194;

8 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
9 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
10 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
11 Lab. Code §§ 1194 and 1197;

12 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
13 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
14 statement in writing showing the corresponding correct amount of wages earned by
15 the employee;

16 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and
17 the other members of the CALIFORNIA LABOR SUB-CLASS with all legally
18 required off-duty, uninterrupted thirty (30) minute meal breaks and the legally
19 required off-duty rest breaks;

20 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
21 employee is discharged or quits from employment, the employer must pay the
22 employee all wages due without abatement, by failing to tender full payment and/or
23 restitution of wages owed or in the manner required by California law to the
24 members of the CALIFORNIA LABOR SUB-CLASS who have terminated their
25 employment; and,

26 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the
27 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred
28 in the discharge of their job duties.

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

3 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
4 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is
5 impracticable and the disposition of their claims as a class will benefit the parties
6 and the Court;

7 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
8 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
9 and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

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

20 (d) The representative PLAINTIFFS will fairly and adequately represent and protect
21 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
22 who are competent and experienced in Class Action litigation. There are no
23 material conflicts between the claims of the representative PLAINTIFFS and the
24 members of the CALIFORNIA LABOR SUB-CLASS that would make class
25 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
26 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
27 Members.
28

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

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

7 1) Inconsistent or varying adjudications with respect to individual members
8 of the CALIFORNIA LABOR SUB-CLASS which would establish
9 incompatible standards of conduct for the parties opposing the
10 CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

27 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS
28 in individually controlling the prosecution or defense of separate actions in

1 that the substantial expense of individual actions will be avoided to recover
2 the relatively small amount of economic losses sustained by the individual
3 CALIFORNIA LABOR SUB-CLASS Members when compared to the
4 substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

1 DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-
2 CLASS PERIOD; and,

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

7
8 **FIRST CAUSE OF ACTION**

9 **For Unlawful Business Practices**

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

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

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

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

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

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

25 Cal. Bus. & Prof. Code § 17203.

26 49. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
27 business practice which violates California law, including but not limited to, the applicable Industrial Wage
28 Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210,
221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor Standards Act and federal
regulations promulgated thereunder, for which this Court should issue declaratory and other equitable relief

1 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
2 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

1 CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT
2 is restrained from continuing to engage in these unlawful and unfair business practices.

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

6 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

8 **and Against All Defendants)**

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

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

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

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

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

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

27 67. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
28 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and

1 practice that denies accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
2 LABOR SUB-CLASS in regards to minimum wage pay.

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

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

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

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

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

27 73. In performing the acts and practices herein alleged in violation of California labor laws, and
28 refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and

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

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

16 **THIRD CAUSE OF ACTION**

17 **For Failure To Pay Overtime Compensation**

18 **[Cal. Lab. Code § 510]**

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

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

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

28 77. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and

1 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

26 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFFS
28 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFFS and the other

1 members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining
2 agreement that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFFS
3 bring this Action on behalf of themselves and the CALIFORNIA LABOR SUB-CLASS based on
4 DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **For Failure to Provide Required Meal Periods**

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

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

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

21 91. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to
22 provide all the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR
23 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work
24 performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these
25 employees from being relieved of all of their duties for the legally required off-duty meal periods. As a
26 result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
27 Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
28 Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-

1 CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
2 DEFENDANT's business records from time to time. Further, DEFENDANT failed to provide
3 PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays
4 in which these employees were required by DEFENDANT to work ten (10) hours of work from time to
5 time. As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore
6 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict
7 corporate policy and practice.

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

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

16 **FIFTH CAUSE OF ACTION**

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

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

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

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

22 95. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from time
23 to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
24 Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes
25 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
26 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest
27 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
28 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one

1 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
2 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by
3 DEFENDANT and DEFENDANT's managers.

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

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

11 **SIXTH CAUSE OF ACTION**

12 **For Failure to Provide Accurate Itemized Statements**

13 **[Cal. Lab. Code § 226]**

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

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

17 99. Cal. Labor Code § 226 provides that an employer must furnish employees with
18 an "accurate itemized" statement in writing showing:

- 19 (1) gross wages earned,
20 (2) total hours worked by the employee, except for any employee whose compensation is solely
21 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515
22 or any applicable order of the Industrial Welfare Commission,
23 (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a
24 piece-rate basis,
25 (4) all deductions, provided that all deductions made on written orders of the employee may be
26 aggregated and shown as one item,
27 (5) net wages earned,
28 (6) the inclusive dates of the period for which the employee is paid,
(7) the name of the employee and his or her social security number, except that by January 1, 2008,
only the last four digits of his or her social security number or an employee identification number
other than a social security number may be shown on the itemized statement,
(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

1 100. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which
3 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides
4 that every employer shall furnish each of his or her employees with an accurate itemized wage statement
5 in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during
6 the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFFS and
7 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements
8 should reflect all applicable hourly rates during the pay period and the total hours worked, and the
9 applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a).
10 The wage statements DEFENDANT provided to PLAINTIFFS and other CALIFORNIA LABOR SUB-
11 CLASS Members failed to identify such information. More specifically, the wage statements failed to
12 identify the accurate total hours worked each pay period. When the hours shown on the wage statements
13 were added up, they did not equal the actual total hours worked during the pay period in violation of Cal.
14 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to
15 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor
16 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
17 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
18 § 226.

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

1
2 **SEVENTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code § 2802]**

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

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

8
9 103. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

5
6 **EIGHTH CAUSE OF ACTION**

7 **For Failure to Pay Wages When Due**

8 **[Cal. Lab. Code §§ 201, 202, 203]**

9 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

10 **and Against All Defendants)**

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

13 107. Cal. Lab. Code § 200 provides, in relevant part, that:

14 As used in this article:

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

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

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

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

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

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

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

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

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

7 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
8 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have
9 not been fully paid their wages due to them, PLAINTIFFS demand thirty days of pay as penalty for not
10 paying all wages due at time of termination for all employees who terminated employment during the
11 CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages due,
12 plus interest and statutory costs as allowed by law.

13 **NINTH CAUSE OF ACTION**

14 **For Failure to Pay Sick Pay Wages**

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

16 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

17 **and Against All Defendants)**

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

21 115. Cal Lab. Code § 233 provides that an employer must permit an employee to
22 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of
23 entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of accrued
24 sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as paid sick
25 time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate
26 based on one of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
27 same manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
28

1 whether or not the employee actually works overtime in that workweek,” or (ii) “Paid sick time for
2 nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime
3 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of
4 employment.” Under Cal Lab. Code §§ 218 and 233, employees may sue to recover underpaid sick pay
5 wages as damages.

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

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

1 for violations of Cal. Lab. Code § 204 and untimely payments during employment. Under Cal. Lab. Code
2 §§ 203, 210 and 218, employees may sue to recover applicable penalties.

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

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

19 **TENTH CAUSE OF ACTION**

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

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

22 **(By Plaintiff Isaac Rodriguez and Against All Defendants)**

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

25 121. PAGA is a mechanism by which the State of California itself can enforce state labor laws
26 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
27 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement
28

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

7 122. Plaintiff Rodriguez and such persons that may be added from time to time who satisfy the
8 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this
9 Representative Action on behalf of the State of California with respect to himself and non-exempt
10 employees who worked for Defendant in the State of California ("AGGRIEVED EMPLOYEES") from
11 October 31, 2021 to a date to be ordered by the Court (the "PAGA PERIOD").

12 123. On October 31, 2022, Plaintiff Rodriguez gave written notice by electronic mail to the Labor
13 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific
14 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory
15 waiting period for Plaintiff Rodriguez to add these allegations to the Complaint has expired. As a result,
16 pursuant to Section 2699.3, Plaintiff Rodriguez may now commence a representative civil action under
17 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
18 EMPLOYEES as herein defined.

19 124. The policies, acts and practices heretofore described were and are an unlawful business act
20 or practice because DEFENDANT (a) failed to provide Plaintiff Rodriguez and the AGGRIEVED
21 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required
22 meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick pay
23 wages, (e) failed to reimburse employees for required expenses, and (f) failed to provide wages when due,
24 all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*,
25 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
26 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and
27
28

1 thereby gives rise to civil penalties as a result of such conduct.¹ Plaintiff Rodriguez hereby seek recovery
2 of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on Plaintiff Rodriguez and the
4 AGGRIEVED EMPLOYEES.

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

9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFFS prays for judgment against each Defendant, jointly and severally, as
11 follows:

12 1. On behalf of the CALIFORNIA CLASS:

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

23 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
24
25
26

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

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth
2 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
3 pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory damages for
5 minimum and overtime compensation due PLAINTIFFS and the other members of the
6 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
7 CLASS PERIOD plus interest thereon at the statutory rate;
- 8 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
9 a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA
10 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an
11 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of
12 Cal. Lab. Code § 226;
- 13 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
14 applicable IWC Wage Order;
- 15 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- 16 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR
17 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
- 18 G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a
19 penalty from the due date thereof at the same rate until paid or until an action therefore is
20 commenced, in accordance with Cal. Lab. Code § 203.
- 21 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 22 A) Recovery of civil penalties as prescribed by the Labor Code Private
23 Attorneys General Act of 2004; and,
- 24 B) An award of attorneys' fees and cost of suit, as allowable under the
25 law, including, but not limited to, pursuant to Labor Code §2699.
- 26 4. On all claims:
- 27 A) An award of interest, including prejudgment interest at the legal rate;
- 28 B) Such other and further relief as the Court deems just and equitable; and,

1 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
2 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.
3

4 Dated: April 12, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
5
6

7 By: /s/ Nicholas J. De Blouw
8 Norman B. Blumenthal
9 Kyle R. Nordrehaug
10 Nicholas J. De Blouw
11 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: April 12, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiff