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ELECTRONICALLY FILED

Superior Court of California,
County of Siskiyou

04/24/2024 at 10:34:31 AM

By: MICHELE CHANDLER, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

LAPREAL VINCENT, CHARLENE KEARNEY,
individuals, on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

WESTERN BUYERS LLC, a Limited Liability
Company; US LBM HOLDINGS, LLC, a Limited
Liability Company; ACS - US LBM, LLC, a Limited
Liability Company; AMERICAN CONSTRUCTION
SOURCE - US LBM, INC., a Corporation;
AMERICAN CONSTRUCTION SOURCE LLC, a
Limited Liability Company; CALIFORNIA
BUILDING SUPPLY - US LBM, LLC, a Limited
Liability Company; DESERT LUMBER - US LBM,
LLC, a Limited Liability Company; PARKER's
BUILDING SUPPLY - US LBM, LLC, a Limited
Liability Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV00757

**SECOND 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 Lapreal Vincent and Charlene Kearney (“PLAINTIFFS”), individuals, on behalf of
2 themselves and all other similarly situated current and former employees allege on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Western Buyers LLC is a limited liability company that at all relevant times
7 mentioned herein conducted and continues to conduct substantial business in the state of California.

8 2. Defendant US LBM Holdings, LLC is a limited liability company that at all relevant times
9 mentioned herein conducted and continues to conduct substantial business in the state of California.

10 3. Defendant ACS - US LBM, LLC is a limited liability company that at all relevant times
11 mentioned herein conducted and continues to conduct substantial business in the state of California.

12 4. Defendant American Construction Source - US LBM, Inc. is a corporation that at all relevant
13 times mentioned herein conducted and continues to conduct substantial business in the state of California.

14 5. Defendant American Construction Source LLC is a limited liability company that at all
15 relevant times mentioned herein conducted and continues to conduct substantial business in the state of
16 California.

17 6. Defendant California Building Supply - US LBM, LLC is a limited liability company that
18 at all relevant times mentioned herein conducted and continues to conduct substantial business in the state
19 of California.

20 7. Defendant Desert Lumber - US LBM, LLC is a limited liability company that at all relevant
21 times mentioned herein conducted and continues to conduct substantial business in the state of California.

22 8. Defendant Parker’s Building Supply - US LBM, LLC is a limited liability company that at
23 all relevant times mentioned herein conducted and continues to conduct substantial business in the state of
24 California.

25 9. PLAINTIFFS allege there has existed a unity of interest and ownership between Western
26 Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC and/or American Construction
27 Source - US LBM, Inc. and/or American Construction Source LLC and/or California Building Supply - US
28 LBM, LLC and/or Desert Lumber - US LBM, LLC and/or Parker’s Building Supply - US LBM, LLC such

1 that any individuality and separateness between the entities has ceased and all Defendants are referred to
2 herein as “DEFENDANT.”

3 10. PLAINTIFFS allege that DOES 1-50 are the partners, agents, owners, or managers of
4 DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest and ownership
5 between DEFENDANT such that any individuality and separateness between the entities has ceased.
6 Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC and/or American
7 Construction Source - US LBM, Inc. and/or American Construction Source LLC and/or California Building
8 Supply - US LBM, LLC and/or Desert Lumber - US LBM, LLC and/or Parker’s Building Supply - US
9 LBM, LLC and DOES 1-50 are therefore alter egos of each other. Adherence to the fiction of the separate
10 existence of DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice
11 by protecting DEFENDANT from liability for the wrongful acts committed by them.

12 11. PLAINTIFFS further allege that Defendants are the alter egos of each other for the following
13 reasons:

14 (A) On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>)
15 Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC
16 and/or American Construction Source - US LBM, Inc. and/or American
17 Construction Source LLC California Building Supply - US LBM, LLC and/or
18 Desert Lumber - US LBM, LLC and/or Parker’s Building Supply - US LBM, LLC
19 have the same entity address and/or mailing address and/or Agent for Service of
20 Process; and,

21 (B) On information and belief Western Buyers LLC and/or US LBM Holdings, LLC
22 and/or ACS - US LBM, LLC and/or American Construction Source - US LBM, Inc.
23 and/or American Construction Source LLC California Building Supply - US LBM,
24 LLC and/or Desert Lumber - US LBM, LLC and/or Parker’s Building Supply - US
25 LBM, LLC utilize the same standardized employment forms and issue the same
26 employment policies.

27 12. DEFENDANT is a full-line distributor of specialty building materials.

28 13. Plaintiff Lapreal Vincent was employed by DEFENDANT in California from May of 2022

1 to September 22, 2022. Plaintiff Charlene Kearney was employed by DEFENDANT from October 2021
2 through October 21, 2022. PLAINTIFFS were at all times classified by DEFENDANT as non-exempt
3 employees, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
4 of minimum and overtime wages due for all time worked.

5 14. PLAINTIFFS bring this Class Action on behalf of themselves and a California class, defined
6 as all individuals who are or previously were employed by Western Buyers LLC and/or US LBM Holdings,
7 LLC and/or ACS - US LBM, LLC and/or American Construction Source - US LBM, Inc. and/or American
8 Construction Source LLC and/or California Building Supply - US LBM, LLC and/or Desert Lumber - US
9 LBM, LLC and/or Parker's Building Supply - US LBM, LLC in California, including any employees
10 staffed with Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC and/or
11 American Construction Source - US LBM, Inc. and/or American Construction Source LLC and/or California
12 Building Supply - US LBM, LLC and/or Desert Lumber - US LBM, LLC and/or Parker's Building Supply -
13 US LBM, LLC by a third party, and classified as non-exempt employees (the "CALIFORNIA CLASS")
14 at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on
15 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
16 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

17 15. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA CLASS
18 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA
19 CLASS PERIOD caused by DEFENDANT's policy and practice which failed to lawfully compensate these
20 employees. DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive
21 business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and the
22 other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
23 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
24 PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically injured
25 by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.
26

27 16. The true names and capacities, whether individual, corporate, subsidiary, partnership,
28 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS

1 who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474.
2 PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1
3 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and believe, and based upon
4 that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through
5 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately
6 caused the injuries and damages hereinafter alleged.

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

14 15 **THE CONDUCT**

16 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required
17 to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time
18 during which an employee is subject to the control of an employer, including all the time the employee is
19 suffered or permitted to work. DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members
20 to work without paying them for all the time they are under DEFENDANT's control. Among other things,
21 DEFENDANT requires PLAINTIFFS to work while clocked out during what is supposed to be
22 PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments
23 while clocked out for what should have been PLAINTIFFS' off-duty meal break. DEFENDANT, as a
24 matter of established company policy and procedure, administers a uniform practice of rounding the actual
25 time worked and recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of
26 DEFENDANT, so that during the course of their employment, PLAINTIFFS and CALIFORNIA CLASS
27 Members are paid less than they would have been paid had they been paid for actual recorded time rather
28 than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and

1 CALIFORNIA CLASS Members to perform work off the clocking that DEFENDANT, as a condition of
2 employment, required these employees to submit to mandatory temperature checks and symptom
3 questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the
4 workday. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit minimum wage,
5 overtime wage compensation, and off-duty meal breaks by working without their time being correctly
6 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
7 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by
8 DEFENDANT's business records.

9 19. State and federal law provides that employees must be paid overtime and meal and rest break
10 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA
11 CLASS Members are compensated at an hourly rate plus incentive pay that is tied to specific elements of
12 an employee's performance.

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

26 21. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS
27 Members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully
28 relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA CLASS Members were

1 required from time to time to perform work as ordered by DEFENDANT for more than five (5) hours during
2 some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide
3 PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays
4 in which these employees were required by DEFENDANT to work ten (10) hours of work. DEFENDANT
5 also engaged in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFFS
6 and other CALIFORNIA CLASS Members. PLAINTIFFS and other members of the CALIFORNIA
7 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
8 DEFENDANT's corporate policy and practice.

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

27 23. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and
28 pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of time these employees

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

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

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

4 [I]n addition to, and entirely independent and apart from, any other penalty provided in this article,
5 every person who fails to pay the wages of each employee as provided in Sections. . . .204. . . shall be subject
6 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.

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

11 27. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS
12 Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246.
13 Specifically, PLAINTIFFS and other non-exempt employees earn non-discretionary remuneration. Rather
14 than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other
15 CALIFORNIA CLASS Members at their base rates of pay.

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

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

24 30. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and other
25 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties
26 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and believe and based thereon
27 allege that such failure to pay sick pay at regular rate was willful, such that PLAINTIFFS and members of
28

1 the CALIFORNIA CLASS whose employment has separated are entitled to waiting time penalties pursuant
2 to Cal. Lab. Code Sections 201-203.

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

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

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

1 unreimbursed business expenses which included, but were not limited to, costs related to the use of their
2 personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE CALIFORNIA CLASS**

23
24 37. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business
25 Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to
26 Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or
27 previously were employed by Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM,
28 LLC and/or American Construction Source - US LBM, Inc. and/or American Construction Source LLC

1 and/or California Building Supply - US LBM, LLC and/or Desert Lumber - US LBM, LLC and/or Parker's
2 Building Supply - US LBM, LLC in California, including any employees staffed with Western Buyers LLC
3 and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC and/or American Construction Source - US
4 LBM, Inc. and/or American Construction Source LLC and/or California Building Supply - US LBM, LLC
5 and/or Desert Lumber - US LBM, LLC and/or Parker's Building Supply - US LBM, LLC by a third party,
6 and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
7 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the
8 Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
9 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

26 41. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
27 Members is impracticable.

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

- 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 43. 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 44. 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

1 individual's job with DEFENDANT or with a subsequent employer, the
2 Class Action is the only means to assert their claims through a
3 representative; and,

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

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

- 11 (a) The questions of law and fact common to the CALIFORNIA CLASS predominate
12 over any question affecting only individual CALIFORNIA CLASS Members
13 because the DEFENDANT's employment practices are applied with respect to the
14 CALIFORNIA CLASS;
- 15 (b) A Class Action is superior to any other available method for the fair and efficient
16 adjudication of the claims of the members of the CALIFORNIA CLASS because
17 in the context of employment litigation a substantial number of individual
18 CALIFORNIA CLASS Members will avoid asserting their rights individually out
19 of fear of retaliation or adverse impact on their employment;
- 20 (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical
21 to bring all members of the CALIFORNIA CLASS before the Court;
- 22 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able to
23 obtain effective and economic legal redress unless the action is maintained as a
24 Class Action;
- 25 (e) There is a community of interest in obtaining appropriate legal and equitable relief
26 for the acts of unfair competition, statutory violations and other improprieties, and
27 in obtaining adequate compensation for the damages and injuries which
28 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 46. 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 47. 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 Western Buyers LLC and/or US LBM Holdings, LLC
22 and/or ACS - US LBM, LLC and/or American Construction Source - US LBM, Inc. and/or American
23 Construction Source LLC and/or California Building Supply - US LBM, LLC and/or Desert Lumber - US
24 LBM, LLC and/or Parker's Building Supply - US LBM, LLC in California, including any employees staffed
25 with Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC and/or American
26 Construction Source - US LBM, Inc. and/or American Construction Source LLC and/or California Building
27 Supply - US LBM, LLC and/or Desert Lumber - US LBM, LLC and/or Parker's Building Supply - US
28 LBM, LLC by a third party, and classified as non exempt employees (the "CALIFORNIA LABOR SUB-

1 CLASS”) at any time during the period three (3) years prior to the filing of the complaint and ending on the
2 date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal.
3 Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
4 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 24 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
25 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
26 missed meal and rest breaks in violation of the California Labor Code and
27 California regulations and the applicable California Wage Order;
28

- 1 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other members
2 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
3 statements;
4 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed
5 conduct;
6 (d) The proper measure of damages and penalties owed to the members of the
7 CALIFORNIA LABOR SUB-CLASS; and,
8 (e) Whether DEFENDANT's conduct was willful.

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

- 11 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS and
12 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
13 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code §
14 1194;
15 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
16 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
17 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
18 Lab. Code §§ 1194 and 1197;
19 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
20 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
21 statement in writing showing the corresponding correct amount of wages earned by
22 the employee;
23 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and
24 the other members of the CALIFORNIA LABOR SUB-CLASS with all legally
25 required off-duty, uninterrupted thirty (30) minute meal breaks and the legally
26 required off-duty rest breaks;
27 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
28 employee is discharged or quits from employment, the employer must pay the

1 employee all wages due without abatement, by failing to tender full payment and/or
2 restitution of wages owed or in the manner required by California law to the
3 members of the CALIFORNIA LABOR SUB-CLASS who have terminated their
4 employment; and,

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

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

- 10 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
11 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is
12 impracticable and the disposition of their claims as a class will benefit the parties
13 and the Court;
- 14 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
15 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
16 and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- 17 (c) The claims of the representative PLAINTIFFS are typical of the claims of each
18 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the
19 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
20 employee paid on an hourly basis who was subjected to the DEFENDANT's
21 practice and policy which failed to pay the correct amount of wages due to the
22 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury
23 as a result of DEFENDANT's employment practices. PLAINTIFFS and the
24 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
25 identically harmed by the same unlawful, deceptive, and unfair misconduct
26 engaged in by DEFENDANT; and,
- 27 (d) The representative PLAINTIFFS will fairly and adequately represent and protect
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel

1 who are competent and experienced in Class Action litigation. There are no
2 material conflicts between the claims of the representative PLAINTIFFS and the
3 members of the CALIFORNIA LABOR SUB-CLASS that would make class
4 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
5 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
6 Members.

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

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

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

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

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

27 (c) Common questions of law and fact predominate as to the members of the
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations

1 of California Law as listed above, and predominate over any question affecting only
2 individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is
3 superior to other available methods for the fair and efficient adjudication of the
4 controversy, including consideration of:

- 5 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS
6 in individually controlling the prosecution or defense of separate actions in
7 that the substantial expense of individual actions will be avoided to recover
8 the relatively small amount of economic losses sustained by the individual
9 CALIFORNIA LABOR SUB-CLASS Members when compared to the
10 substantial expense and burden of individual prosecution of this litigation;
- 11 2) Class certification will obviate the need for unduly duplicative litigation
12 that would create the risk of:
 - 13 A. Inconsistent or varying adjudications with respect to individual
14 members of the CALIFORNIA LABOR SUB-CLASS, which
15 would establish incompatible standards of conduct for the
16 DEFENDANT; and/or,
 - 17 B. Adjudications with respect to individual members of the
18 CALIFORNIA LABOR SUB-CLASS would as a practical matter
19 be dispositive of the interests of the other members not parties to
20 the adjudication or substantially impair or impede their ability to
21 protect their interests;
- 22 3) In the context of wage litigation because a substantial number of individual
23 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
24 legal rights out of fear of retaliation by DEFENDANT, which may
25 adversely affect an individual's job with DEFENDANT or with a
26 subsequent employer, the Class Action is the only means to assert their
27 claims through a representative; and,
28

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

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

- 8 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS
9 predominate over any question affecting only individual CALIFORNIA LABOR
10 SUB-CLASS Members;
- 11 (b) A Class Action is superior to any other available method for the fair and efficient
12 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
13 CLASS because in the context of employment litigation a substantial number of
14 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
15 rights individually out of fear of retaliation or adverse impact on their employment;
- 16 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it
17 is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
18 before the Court;
- 19 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will
20 not be able to obtain effective and economic legal redress unless the action is
21 maintained as a Class Action;
- 22 (e) There is a community of interest in obtaining appropriate legal and equitable relief
23 for the acts of unfair competition, statutory violations and other improprieties, and
24 in obtaining adequate compensation for the damages and injuries which
25 DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-
26 CLASS;
- 27
28

- 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 LABOR SUB-CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable
8 from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-
9 CLASS consists of all CALIFORNIA CLASS Members who worked for
10 DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-
11 CLASS PERIOD; and,
- 12 (i) Class treatment provides manageable judicial treatment calculated to bring a
13 efficient and rapid conclusion to all litigation of all wage and hour related claims
14 arising out of the conduct of DEFENDANT as to the members of the
15 CALIFORNIA LABOR SUB-CLASS.

16
17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

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

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

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

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

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

27 Any person who engages, has engaged, or proposes to engage in unfair competition may
28 be enjoined in any court of competent jurisdiction. The court may make such orders or
judgments, including the appointment of a receiver, as may be necessary to prevent the use

1 or employment by any person of any practice which constitutes unfair competition, as
2 defined in this chapter, or as may be necessary to restore to any person in interest any
3 money or property, real or personal, which may have been acquired by means of such unfair
4 competition.

5 Cal. Bus. & Prof. Code § 17203.

6 59. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
7 business practice which violates California law, including but not limited to, the applicable Industrial Wage
8 Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210,
9 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor Standards Act and federal
10 regulations promulgated thereunder, for which this Court should issue declaratory and other equitable relief
11 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
12 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

18 61. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in
19 that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest periods, the
20 required amount of compensation for missed meal and rest periods and overtime and minimum wages owed,
21 failed to timely pay wages, and failed to reimburse all necessary business expenses incurred, and failed to
22 provide Fair Labor Standards Act overtime wages due for overtime worked as a result of failing to include
23 non-discretionary incentive compensation into their regular rates of pay for purposes of computing the
24 proper overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
25 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
26 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
27 § 17203, including restitution of wages wrongfully withheld.
28

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

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

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

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

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

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

26 68. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and do,
27 seek such relief as may be necessary to restore to them the money and property which DEFENDANT has
28 acquired, or of which PLAINTIFFS and the other members of the CALIFORNIA CLASS have been

1 deprived, by means of the above described unlawful and unfair business practices, including earned but
2 unpaid wages for all time worked.

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

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

13
14 **SECOND CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

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

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

18 **and Against All Defendants)**

19 71. 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
22 72. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a
23 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
24 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum
25 wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

27 81. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
28 to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time they

1 worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have suffered
2 and will continue to suffer an economic injury in amounts which are presently unknown to them and which
3 will be ascertained according to proof at trial.

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

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

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

7
8 86. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a
9 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
10 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime
11 worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in
12 a workday, and/or forty (40) hours in any workweek.

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

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

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

22 90. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
23 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT to
24 work for DEFENDANT and were not paid for all the time they worked, including overtime work.

25 91. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
26 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and
27 practice that failed to accurately record overtime worked by PLAINTIFFS and other CALIFORNIA
28 LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFFS and the other members

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

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

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

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

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

27 96. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for the true amount of

1 time they worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have
2 suffered and will continue to suffer an economic injury in amounts which are presently unknown to them
3 and which will be ascertained according to proof at trial.

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

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1 identify the accurate total hours worked each pay period. When the hours shown on the wage statements
2 were added up, they did not equal the actual total hours worked during the pay period in violation of Cal.
3 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to
4 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor
5 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
6 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
7 § 226.

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

18 19 **SEVENTH CAUSE OF ACTION**

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

21 **[Cal. Lab. Code § 2802]**

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

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

25
26 113. Cal. Lab. Code § 2802 provides, in relevant part, that:

27 An employer shall indemnify his or her employee for all necessary expenditures or losses
28 incurred by the employee in direct consequence of the discharge of his or her duties, or of

1 his or her obedience to the directions of the employer, even though unlawful, unless the
2 employee, at the time of obeying the directions, believed them to be unlawful.

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

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

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1 **EIGHTH CAUSE OF ACTION**

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

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

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

5 **and Against All Defendants)**

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

8 117. Cal. Lab. Code § 200 provides, in relevant part, that:
9 As used in this article:

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

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

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

18 119. Cal. Lab. Code § 202 provides, in relevant part, that:

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

28 120. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-CLASS
Members' employment contract.

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

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

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

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

NINTH CAUSE OF ACTION

For Failure to Pay Sick Pay Wages

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

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

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

125. Cal Lab. Code § 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of

1 employment.” Under Cal Lab. Code §§ 218 and 233, employees may sue to recover underpaid sick pay
2 wages as damages.

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

13 127. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
14 during each calendar month and are to be paid no later than the payday for the next regular payroll period.
15 Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon use of accrued
16 sick leave, vested sick pay wages are due and to be paid no later than the payday for the next regular payroll
17 period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201 provides that if
18 an employer discharges an employee, wages earned and unpaid at the time of discharge are due and payable
19 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all unpaid wages no later
20 than 72 hours after an employee quits his or her employment, unless the employee has given 72-hour notice
21 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
22 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203 provides that
23 if an employer willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
24 wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the
25 wages shall not continue for more than thirty (30) days. Likewise, Cal. Lab. Code § 210 provides penalties
26 for violations of Cal. Lab. Code § 204 and untimely payments during employment. Under Cal. Lab. Code
27 §§ 203, 210 and 218, employees may sue to recover applicable penalties.

28 128. As alleged herein and as a matter of policy and practice, DEFENDANT

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

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

17 **TENTH CAUSE OF ACTION**

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

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

20 **(By Plaintiff Lapreal Vincent and Against All Defendants)**

21 130. Plaintiff Lapreal Vincent realleges and incorporates by this reference, as though fully set
22 forth herein, the prior paragraphs of this Complaint.

23 131. PAGA is a mechanism by which the State of California itself can enforce state labor laws
24 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
25 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
26 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
27 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
28 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that

1 "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover
2 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot
3 be subject to arbitration.

4 132. Plaintiff Lapreal Vincent, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
6 this Representative Action on behalf of the State of California with respect to themselves and all individuals
7 who are or previously were employed by Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS
8 - US LBM, LLC and/or American Construction Source - US LBM, Inc. and/or American Construction
9 Source LLC and/or California Building Supply - US LBM, LLC and/or Desert Lumber - US LBM, LLC
10 and/or Parker's Building Supply - US LBM, LLC in California, including any employees staffed with
11 Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC and/or American
12 Construction Source - US LBM, Inc. and/or American Construction Source LLC and/or California Building
13 Supply - US LBM, LLC and/or Desert Lumber - US LBM, LLC and/or Parker's Building Supply - US
14 LBM, LLC by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
15 during the time period of October 26, 2021 until a date as determined by the Court (the "PAGA PERIOD").

16 133. On October 26, 2022, Plaintiff Lapreal Vincent gave written notice by electronic mail to the
17 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
18 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The
19 statutory waiting period for Plaintiff Lapreal Vincent to add these allegations to the Complaint has expired.
20 As a result, pursuant to Section 2699.3, Plaintiff Lapreal Vincent may now commence a representative civil
21 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
22 AGGRIEVED EMPLOYEES as herein defined.

23 134. The policies, acts and practices heretofore described were and are an unlawful business act
24 or practice because DEFENDANT (a) failed to provide Plaintiff Lapreal Vincent and the AGGRIEVED
25 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required
26 meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick pay
27 wages, (e) failed to reimburse employees for required expenses, and (f) failed to provide wages when due,
28 all in violation of the applicable Labor Code sections listed in 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), and thereby gives rise to civil penalties as a result of such conduct.¹ Plaintiff Lapreal Vincent hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on Plaintiff Lapreal Vincent and the AGGRIEVED EMPLOYEES.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

¹Plaintiff specifically excludes and/or does not allege any claims under California 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 PLAINTIFF 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.

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6 Dated: April 23, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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9 By: /s/ Nicholas J. De Blouw
10 Norman B. Blumenthal
11 Kyle R. Nordrehaug
12 Nicholas J. De Blouw

13 *Attorneys for Plaintiff*

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DEMAND FOR A JURY TRIAL

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

Dated: April 23, 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