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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

RACHEL MACDONALD, an individual,
on behalf of herself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

BEST FRIENDS ANIMAL SOCIETY, a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **22STCV37493**

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
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. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

03/01/2024

David W. Slayton, Executive Officer / Clerk of Court

By: C. Gomez Deputy

1 Plaintiff Rachel Macdonald (“PLAINTIFF”), an individual, on behalf of herself and all
2 other similarly situated current and former employees alleges on information and belief, except
3 for her own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Best Friends Animal Society (“DEFENDANT”) is a corporation that at all relevant
7 times mentioned herein conducted and continues to conduct substantial business in the state of
8 California.

9 2. DEFENDANT provides sanctuary for homeless animals.

10 3. PLAINTIFF was employed by DEFENDANT in California from August of 2021
11 to August 26, 2022 and was at all times classified by DEFENDANT as a non-exempt employee,
12 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
13 minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
17 period November 30, 2018 to December 11, 2023 (the “CALIFORNIA CLASS PERIOD”). The
18 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
19 million dollars (\$5,000,000.00).

20 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
21 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
22 during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice
23 which failed to lawfully compensate these employees. DEFENDANT’s policy and practice
24 alleged herein was an unlawful, unfair and deceptive business practice whereby
25 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
26 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
27 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
28 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS

1 who have been economically injured by DEFENDANT's past and current unlawful conduct,
2 and all other appropriate legal and equitable relief.

3 6. PLAINTIFF also brings the Tenth Cause of Action against DEFENDANT
4 seeking to recover PAGA civil penalties for herself, and on behalf of all current and former
5 aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to recover**
6 **anything other than penalties as permitted by California Labor Code § 2699 in the**
7 **Tenth Cause of Action**. To the extent that statutory violations are mentioned for wage
8 violations, PLAINTIFF's Tenth Cause of Action does not seek underlying general and/or
9 special damages for those violations, but simply the civil penalties permitted by California
10 Labor Code § 2699.

11 7. California has enacted the PAGA to permit an individual to bring an action on
12 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and
13 sole nature of the Tenth Cause of Action.

14 8. Accordingly, PLAINTIFF's Tenth Cause of Action seeks to obtain all
15 applicable relief for DEFENDANT's violations under PAGA and solely for the relief as
16 permitted by PAGA – that is, penalties and any other relief the Court deems proper pursuant
17 to the PAGA.

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

27 10. The agents, servants and/or employees of the Defendants and each of them
28 acting on behalf of the Defendants acted within the course and scope of his, her or its

1 authority as the agent, servant and/or employee of the Defendants, and personally participated
2 in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged
3 herein. Consequently, the acts of each Defendant are legally attributable to the other
4 Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other
5 members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the
6 conduct of the Defendants' agents, servants and/or employees.

7 **THE CONDUCT**

8 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
9 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
10 worked, meaning the time during which an employee is subject to the control of an employer,
11 including all the time the employee is suffered or permitted to work. DEFENDANT requires
12 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the
13 time they are under DEFENDANT's control. Among other things, DEFENDANT requires
14 PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty
15 meal break. PLAINTIFF was from time to time interrupted by work assignments while
16 clocked out for what should have been PLAINTIFF's off-duty meal break. DEFENDANT, as
17 a matter of established company policy and procedure, administers a uniform practice of
18 rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS
19 Members, always to the benefit of DEFENDANT, so that during the course of their
20 employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would
21 have been paid had they been paid for actual recorded time rather than "rounded" time.
22 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and
23 CALIFORNIA CLASS Members to perform work off the clocking that DEFENDANT, as a
24 condition of employment, required these employees to submit to mandatory temperature
25 checks and symptom questionnaires for COVID-19 screening prior to clocking into
26 DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFF and other
27 CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and
28 off-duty meal breaks by working without their time being correctly recorded and without

1 compensation at the applicable rates. DEFENDANT's policy and practice not to pay
2 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
3 DEFENDANT's business records.

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

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

23 14. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
25 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
26 other CALIFORNIA CLASS Members were required from time to time to perform work as
27 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
28 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and

1 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
2 which these employees were required by DEFENDANT to work ten (10) hours of work.
3 DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
4 penalties to PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF and other
5 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
6 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

16 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
17 other members of the CALIFORNIA CLASS with complete and accurate wage statements
18 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
19 Code § 226 provides that every employer shall furnish each of his or her employees with an
20 accurate itemized wage statement in writing showing, among other things, gross wages earned
21 and all applicable hourly rates in effect during the pay period and the corresponding amount
22 of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS Members were
23 paid on an hourly basis. As such, the wage statements should reflect all applicable hourly
24 rates during the pay period and the total hours worked, and the applicable pay period in which
25 the wages were earned pursuant to California Labor Code Section 226(a). The wage
26 statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS
27 Members failed to identify such information. More specifically, the wage statements failed to
28 identify the accurate total hours worked each pay period. When the hours shown on the wage

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

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

11 [I]n addition to, and entirely independent and apart from, any other penalty provided in
12 this article, every person who fails to pay the wages of each employee as provided in
13 Sections. . . .204. . . shall be subject to a civil penalty as follows: (1) For any initial
14 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.

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

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

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

1 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
2 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned
3 non-discretionary incentive wages which increased their regular rate of pay. However, when
4 sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and members of the
5 CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay, as required
6 under Cal. Lab. Code Section 246.

7 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
8 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
9 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
10 informed and believes and based thereon alleges that such failure to pay sick pay at regular
11 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
12 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
13 Sections 201-203.

14 24. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
15 to collect or receive from an employee any part of wages theretofore paid by said employer to
16 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
17 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
18 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,
19 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF and
20 CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these employees all
21 wages due at each applicable pay period and upon termination. PLAINTIFF and members of
22 the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
23 according to proof, related penalties, interest, attorney fees and costs.

24 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
25 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
26 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct
27 consequence of discharging their duties on behalf of DEFENDANT. Under California Labor
28 Code Section 2802, employers are required to indemnify employees for all expenses incurred

1 in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an
2 employer shall indemnify his or her employee for all necessary expenditures or losses incurred
3 by the employee in direct consequence of the discharge of his or her duties, or of his or her
4 obedience to the directions of the employer, even though unlawful, unless the employee, at the
5 time of obeying the directions, believed them to be unlawful."

6 26. In the course of their employment PLAINTIFF and other CALIFORNIA
7 CLASS Members as a business expense, were required by DEFENDANT to use their own
8 personal cellular phones as a result of and in furtherance of their job duties as employees for
9 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
10 associated with the use of their personal cellular phones for DEFENDANT's benefit.
11 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
12 DEFENDANT to use their personal cellular phones. As a result, in the course of their
13 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
14 CLASS incurred unreimbursed business expenses which included, but were not limited to,
15 costs related to the use of their personal cellular phones all on behalf of and for the benefit of
16 DEFENDANT.

17 27. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
18 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage
19 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
20 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
21 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
22 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
23 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties
24 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
25 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
26 records.

27 **JURISDICTION AND VENUE**
28

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

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

THE CALIFORNIA CLASS

30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period November 30, 2018 to December 11, 2023 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

32. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though

1 DEFENDANT enjoyed the benefit of this work, required employees to perform this work
2 and permits or suffers to permit this work.

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

12 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
13 CLASS Members is impracticable.

14 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under
15 California law by:

- 16 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
17 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
18 deceptively having in place company policies, practices and procedures
19 that failed to record and pay PLAINTIFF and the other members of the
20 CALIFORNIA CLASS for all time worked, including minimum wages
21 owed and overtime wages owed for work performed by these
22 employees; and,
- 23 (b) Committing an act of unfair competition in violation of the UCL, by
24 failing to provide the PLAINTIFF and the other members of the
25 CALIFORNIA CLASS with the legally required meal and rest periods.

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

- 1 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
2 that the joinder of all such persons is impracticable and the disposition
3 of their claims as a class will benefit the parties and the Court;
- 4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
5 issues that are raised in this Complaint are common to the
6 CALIFORNIA CLASS will apply to every member of the
7 CALIFORNIA CLASS;
- 8 (c) The claims of the representative PLAINTIFF are typical of the claims of
9 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
10 other members of the CALIFORNIA CLASS, was classified as a non-
11 exempt employee paid on an hourly basis who was subjected to the
12 DEFENDANT's deceptive practice and policy which failed to provide
13 the legally required meal and rest periods to the CALIFORNIA CLASS
14 and thereby underpaid compensation to PLAINTIFF and CALIFORNIA
15 CLASS. PLAINTIFF sustained economic injury as a result of
16 DEFENDANT's employment practices. PLAINTIFF and the members
17 of the CALIFORNIA CLASS were and are similarly or identically
18 harmed by the same unlawful, deceptive and unfair misconduct engaged
19 in by DEFENDANT; and,
- 20 (d) The representative PLAINTIFF will fairly and adequately represent and
21 protect the interest of the CALIFORNIA CLASS, and has retained
22 counsel who are competent and experienced in Class Action litigation.
23 There are no material conflicts between the claims of the representative
24 PLAINTIFF and the members of the CALIFORNIA CLASS that would
25 make class certification inappropriate. Counsel for the CALIFORNIA
26 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
27 Members.
28

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

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

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

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

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

21 1) With respect to the First Cause of Action, the final relief on
22 behalf of the CALIFORNIA CLASS sought does not relate
23 exclusively to restitution because through this claim PLAINTIFF
24 seeks declaratory relief holding that the DEFENDANT's policy
25 and practices constitute unfair competition, along with
26 declaratory relief, injunctive relief, and incidental equitable relief
27 as may be necessary to prevent and remedy the conduct declared
28 to constitute unfair competition;

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

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

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

- 4 4) A class action is superior to other available methods for the fair
5 and efficient adjudication of this litigation because class
6 treatment will obviate the need for unduly and unnecessary
7 duplicative litigation that is likely to result in the absence of
8 certification of this action pursuant to Cal. Code of Civ. Proc. §
9 382.

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

- 12 (a) The questions of law and fact common to the CALIFORNIA CLASS
13 predominate over any question affecting only individual CALIFORNIA
14 CLASS Members because the DEFENDANT's employment practices
15 are applied with respect to the CALIFORNIA CLASS;
- 16 (b) A Class Action is superior to any other available method for the fair and
17 efficient adjudication of the claims of the members of the
18 CALIFORNIA CLASS because in the context of employment litigation
19 a substantial number of individual CALIFORNIA CLASS Members will
20 avoid asserting their rights individually out of fear of retaliation or
21 adverse impact on their employment;
- 22 (c) The members of the CALIFORNIA CLASS are so numerous that it is
23 impractical to bring all members of the CALIFORNIA CLASS before
24 the Court;
- 25 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
26 be able to obtain effective and economic legal redress unless the action
27 is maintained as a Class Action;
- 28

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations
3 and other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally
10 applicable to the CALIFORNIA CLASS, thereby making final class-
11 wide relief appropriate with respect to the CALIFORNIA CLASS as a
12 whole;
- 13 (h) The members of the CALIFORNIA CLASS are readily ascertainable
14 from the business records of DEFENDANT; and,
- 15 (i) Class treatment provides manageable judicial treatment calculated to
16 bring a efficient and rapid conclusion to all litigation of all wage and
17 hour related claims arising out of the conduct of DEFENDANT as to the
18 members of the CALIFORNIA CLASS.

19 39. DEFENDANT maintains records from which the Court can ascertain and
20 identify by job title each of DEFENDANT's employees who have been intentionally
21 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
22 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
23 similarly situated employees when they have been identified.

24
25 **THE CALIFORNIA LABOR SUB-CLASS**

26 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
27 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
28 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in

1 California and classified as non-exempt employees (the “CALIFORNIA LABOR SUB-
2 CLASS”) at any time during the period November 30, 2018 to December 11, 2023 (the
3 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. §
4 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
5 CLASS Members is under five million dollars (\$5,000,000.00).

6 41. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
7 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
8 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
9 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
11 these employees, even though DEFENDANT enjoyed the benefit of this work, required
12 employees to perform this work and permitted or suffered to permit this work.

13 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
14 which these employees are entitled in order to unfairly cheat the competition and unlawfully
15 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
16 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
17 should be adjusted accordingly.

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

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

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

- 27 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
28 compensation due to members of the CALIFORNIA LABOR SUB-

1 CLASS for missed meal and rest breaks in violation of the California
2 Labor Code and California regulations and the applicable California
3 Wage Order;

4 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with accurate
6 itemized wage statements;

7 (c) Whether DEFENDANT has engaged in unfair competition by the
8 above-listed conduct;

9 (d) The proper measure of damages and penalties owed to the members of
10 the CALIFORNIA LABOR SUB-CLASS; and,

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

12 45. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
13 under California law by:

14 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
15 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
16 CLASS all wages due for overtime worked, for which DEFENDANT is
17 liable pursuant to Cal. Lab. Code § 1194;

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

22 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
23 the members of the CALIFORNIA LABOR SUB-CLASS with an
24 accurate itemized statement in writing showing the corresponding
25 correct amount of wages earned by the employee;

26 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
27 PLAINTIFF and the other members of the CALIFORNIA LABOR
28

SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;

- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
- (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of

1 DEFENDANT's employment practices. PLAINTIFF and the members
2 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
3 identically harmed by the same unlawful, deceptive, and unfair
4 misconduct engaged in by DEFENDANT; and,

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

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

- 15 (a) Without class certification and determination of declaratory, injunctive,
16 statutory and other legal questions within the class format, prosecution
17 of separate actions by individual members of the CALIFORNIA
18 LABOR SUB-CLASS will create the risk of:
- 19 1) Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA LABOR SUB-CLASS which
21 would establish incompatible standards of conduct for the parties
22 opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 23 2) Adjudication with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS which would as a practical
25 matter be dispositive of interests of the other members not party
26 to the adjudication or substantially impair or impede their ability
27 to protect their interests.
- 28

- 1 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
2 acted or refused to act on grounds generally applicable to the
3 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
4 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
5 whole in that DEFENDANT fails to pay all wages due. Including the
6 correct wages for all time worked by the members of the CALIFORNIA
7 LABOR SUB-CLASS as required by law;
- 8 (c) Common questions of law and fact predominate as to the members of
9 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
10 and violations of California Law as listed above, and predominate over
11 any question affecting only individual CALIFORNIA LABOR SUB-
12 CLASS Members, and a Class Action is superior to other available
13 methods for the fair and efficient adjudication of the controversy,
14 including consideration of:
- 15 1) The interests of the members of the CALIFORNIA LABOR
16 SUB-CLASS in individually controlling the prosecution or
17 defense of separate actions in that the substantial expense of
18 individual actions will be avoided to recover the relatively small
19 amount of economic losses sustained by the individual
20 CALIFORNIA LABOR SUB-CLASS Members when compared
21 to the substantial expense and burden of individual prosecution of
22 this litigation;
- 23 2) Class certification will obviate the need for unduly duplicative
24 litigation that would create the risk of:
- 25 A. Inconsistent or varying adjudications with respect to
26 individual members of the CALIFORNIA LABOR SUB-
27 CLASS, which would establish incompatible standards of
28 conduct for the DEFENDANT; and/or,

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

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

13 4) A class action is superior to other available methods for the fair
14 and efficient adjudication of this litigation because class
15 treatment will obviate the need for unduly and unnecessary
16 duplicative litigation that is likely to result in the absence of
17 certification of this action pursuant to Cal. Code of Civ. Proc. §
18 382.

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

21 (a) The questions of law and fact common to the CALIFORNIA LABOR
22 SUB-CLASS predominate over any question affecting only individual
23 CALIFORNIA LABOR SUB-CLASS Members;

24 (b) A Class Action is superior to any other available method for the fair and
25 efficient adjudication of the claims of the members of the
26 CALIFORNIA LABOR SUB-CLASS because in the context of
27 employment litigation a substantial number of individual CALIFORNIA
28 LABOR SUB-CLASS Members will avoid asserting their rights

1 individually out of fear of retaliation or adverse impact on their
2 employment;

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

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

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

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

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

21 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANT. The
23 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
24 CLASS Members who worked for DEFENDANT in California at any
25 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

26 (i) Class treatment provides manageable judicial treatment calculated to
27 bring a efficient and rapid conclusion to all litigation of all wage and
28

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

3
4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

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

7 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

11 50. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
12 Code § 17021.

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

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

25 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

25 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
26 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
27 provide all legally required meal breaks to PLAINTIFF and the other members of the
28 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

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

8
9 **SECOND CAUSE OF ACTION**

10 **For Failure To Pay Minimum Wages**

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

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

13 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

24 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
25 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
26 Members to work without paying them for all the time they were under DEFENDANT's
27 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
28

1 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
2 that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

8
9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Overtime Compensation**

11 **[Cal. Lab. Code § 510]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

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

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

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

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

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

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

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

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

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

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

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

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

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

22 90. DEFENDANT knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
24 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
25 nonfeasance, to not pay employees for their labor as a matter of company policy, practice and
26 procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and
27 the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.
28

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

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

3
4 **FIFTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

12 98. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
13 from time to time required to work in excess of four (4) hours without being provided ten
14 (10) minute rest periods. Further, these employees from time to time were denied their first
15 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
16 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
17 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
18 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

19 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
20 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
21 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
22 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

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

103. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages

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

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

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

3
4 **SEVENTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 2802]**

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

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

12 106. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

18 107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
19 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
20 CLASS members for required expenses incurred in the discharge of their job duties for
21 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
22 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
23 limited to, costs related to using their personal cellular phones on behalf of and for the
24 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
25 SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones
26 and home offices in order to perform work related job tasks. DEFENDANT's policy and
27 practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
28 members for expenses resulting from using their personal cellular phones and home offices
for DEFENDANT within the course and scope of their employment for DEFENDANT.

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

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

11 **EIGHTH CAUSE OF ACTION**

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

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

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

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

19 110. Cal. Lab. Code § 200 provides, in relevant part, that:

20 As used in this article:

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

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

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

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

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

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

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

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

20 115. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
21 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
22 owed as required by law.

23 116. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
24 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
25 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
26 of pay as penalty for not paying all wages due at time of termination for all employees who
27 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
28 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 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)**

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

4 118. Cal Lab. Code § 233 provides that an employer must permit an employee to
5 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
6 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick
7 pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically,
8 once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay
9 wages, which an employer must calculate and compensate based on one of two calculations:
10 (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the
11 regular rate of pay for the workweek in which the employee uses paid sick time, whether or
12 not the employee actually works overtime in that workweek," or (ii) "Paid sick time for
13 nonexempt employees shall be calculated by dividing the employee's total wages, not
14 including overtime premium pay, by the employee's total hours worked in the full pay
15 periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and 233,
16 employees may sue to recover underpaid sick pay wages as damages.

17 119. As a matter of policy and practice, DEFENDANT pays sick pay wages to
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
19 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
20 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn non-
21 hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay wages
22 to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS at the
23 base hourly pay, as opposed to the regular rate of pay, which would consider all non-hourly
24 remuneration in addition to base hourly wages, or the rate resulting from dividing the
25 employee's total wages, not including overtime premium pay, by the employee's total hours
26 worked in the full pay periods of the prior 90 days of employment. As a result,
27 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
28 CALIFORNIA LABOR-SUB-CLASS.

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

19 121. As alleged herein and as a matter of policy and practice, DEFENDANT
20 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
21 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
22 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
23 among other Labor Code provisions. PLAINTIFF is informed and believes that
24 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
25 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
26 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
27 include those benefits to which an employee is entitled as a part of his or her compensation,
28 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*

1 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
2 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
3 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
4 penalties.

5 122. Such a pattern, practice, and uniform administration of corporate policy is
6 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
7 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
8 attorney's fees, and costs of suit.

9
10 **TENTH CAUSE OF ACTION**

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

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

13 **(By PLAINTIFF and Against All Defendants)**

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

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

26 125. PLAINTIFF, and such persons that may be added from time to time who satisfy
27 the requirements and exhaust the administrative procedures under the Private Attorney
28 General Act, brings this Representative Action on behalf of the State of California with

1 respect to themselves and all individuals who are or previously were employed by
2 DEFENDANT in California and classified as non-exempt employees (the "AGGRIEVED
3 EMPLOYEES") during the time period of October 4, 2021 to December 11, 2023 (the
4 "PAGA PERIOD").

5 126. On October 4, 2022, PLAINTIFF gave written notice by electronic mail to the
6 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
7 employer of the specific provisions of this code alleged to have been violated as required by
8 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
9 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
10 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
11 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

12 127. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
15 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
16 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
17 required expenses, and (f) failed to provide wages when due, all in violation of the applicable
18 Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 et seq., 210, 218, 221,
19 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
20 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
21 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS
22 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
23 General Act of 2004 as the representative of the State of California for the illegal conduct
24 perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

25 128. All of the conduct and violations alleged herein occurred during the
26

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

1 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
2 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
3 violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v.*
4 *Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
2 which a violation occurs and one hundred dollars (\$100) per each member of the
3 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
5 an award of costs for violation of Cal. Lab. Code § 226;
- 6 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
7 the applicable IWC Wage Order;
- 8 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
9 1197;
- 10 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
11 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
12 costs of suit.; and,
- 13 G) The wages of all terminated employees in the CALIFORNIA LABOR
14 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
15 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

16 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- 17 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
18 General Act of 2004.

19 4. On all claims:

- 20 A) An award of interest, including prejudgment interest at the legal rate;
21 B) Such other and further relief as the Court deems just and equitable; and,
22 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
23 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or
24 §2802.
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Dated: March 1, 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

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DEMAND FOR A JURY TRIAL

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

Dated: March 1, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw
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Macdonald v. Best Friends Animal Society
Los Angeles County Superior Court
Case No. 22STCV37493

PROOF OF SERVICE

I, Gerardo Galaviz, am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California, 92037.

On March 1, 2024, I served the document(s) described as:

SECOND AMENDED CLASS ACTION COMPLAINT

____ (ELECTRONIC/E-MAIL): Pursuant to CCP §1010.6, I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

X (BY CASE ANYWHERE): A true and correct copy was electronically served on counsel of record by transmission to Case Anywhere. I uploaded a PDF file of the above document(s) to Case Anywhere, which provided electronic service to the persons listed below:

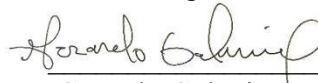
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Attorney For Defendant
BEST FRIENDS ANIMAL SOCIETY

Email(s):
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daniella.lee@fmglaw.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 1, 2024, at San Diego, California.



Gerardo Galaviz