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FILED
Superior Court of California
County of Los Angeles

07/02/2024

David W. Slayton, Executive Officer / Clerk of Court

By: F. Sims Deputy**SUPERIOR COURT OF THE STATE OF CALIFORNIA****IN AND FOR THE COUNTY OF LOS ANGELES**

LOUIE SOTO and MATEO SARRIA,
individuals, on behalf of themselves and on
behalf of all persons similarly situated, and on
behalf of the State of California, as a private
attorney general,

Plaintiffs,

vs.

ONE HEALTH LABORATORIES, LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Lead Case No. 23STCV01753

[Related Case: 23STCV01763]

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

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PAY SICK WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; and,
9. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *et seq.*
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiffs Louie Soto and Mateo Sarria (“Plaintiffs”), an individual, on behalf of himself
2 and all other similarly situated current and former employees alleges on information and belief,
3 except for his own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant One Health Laboratories, LLC (“DEFENDANT”) is 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 mobile COVID testing in California.

10 3. Plaintiff Louie Soto has been employed by DEFENDANT in California since
11 September of 2021 and has been at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

14 4. Plaintiff Mateo Sarria has been employed by DEFENDANT in California since
15 October of 2021 and has been at all times classified by DEFENDANT as a non-exempt
16 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
17 payment of minimum and overtime wages due for all time worked.

18 5. Plaintiffs brings this Class Action on behalf of himself and a California class,
19 defined as all individuals who are or previously were employed by Defendant who were
20 classified as non-exempt in the State of California (the “CALIFORNIA CLASS”) during the
21 period January 27, 2019 to the earlier of preliminary approval or May 12, 2024 (the
22 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
23 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

24 6. Plaintiffs brings this Class Action on behalf of himself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
27 failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged
28 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained

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

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

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

24 **THE CONDUCT**

25 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
26 required to pay Plaintiffs and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. DEFENDANT requires Plaintiffs

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

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

24 11. The second component of Plaintiffs's and other CALIFORNIA CLASS Members'
25 compensation is DEFENDANT's non-discretionary incentive program that paid Plaintiffs and
26 other CALIFORNIA CLASS Members incentive wages based on their performance for
27 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
28 hourly basis with incentive compensation when the employees met the various performance

1 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
2 overtime and meal and rest break premiums to Plaintiffs and other CALIFORNIA CLASS
3 Members, DEFENDANT failed to include the incentive compensation as part of the employees'
4 "regular rate of pay" for purposes of calculating overtime pay and meal and rest break premium
5 pay. Management and supervisors described the incentive program to potential and new
6 employees as part of the compensation package. As a matter of law, the incentive compensation
7 received by Plaintiffs and other CALIFORNIA CLASS Members must be included in the
8 "regular rate of pay." The failure to do so has resulted in a underpayment of overtime
9 compensation and meal and rest break premiums to Plaintiffs and other CALIFORNIA CLASS
10 Members by DEFENDANT.

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

23 13. During the CALIFORNIA CLASS PERIOD, Plaintiffs and other CALIFORNIA
24 CLASS Members are also required from time to time to work in excess of four (4) hours
25 without being provided ten (10) minute rest periods. Further, these employees are denied their
26 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
27 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
28 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and

1 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
2 from time to time. Plaintiffs and other CALIFORNIA CLASS Members are also not provided
3 with one hour wages in lieu thereof. Additionally, the applicable California Wage Order
4 requires employers to provide employees with off-duty rest periods, which the California
5 Supreme Court defined as time during which an employee is relieved from all work related
6 duties and free from employer control. In so doing, the Court held that the requirement under
7 California law that employers authorize and permit all employees to take rest period means that
8 employers must relieve employees of all duties and relinquish control over how employees
9 spend their time which includes control over the locations where employees may take their rest
10 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
11 five minutes out, five minutes back. Here, DEFENDANT's policy restricts Plaintiffs and other
12 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on
13 DEFENDANT's rule which states Plaintiffs and other CALIFORNIA CLASS Members cannot
14 leave the work premises during their rest period.

15 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately
16 record and pay Plaintiffs and other CALIFORNIA CLASS Members for the actual amount of
17 time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT is required to pay Plaintiffs and other CALIFORNIA CLASS Members for all
19 time worked, meaning the time during which an employee was subject to the control of an
20 employer, including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT requires these employees to work off the clock without paying them for all the
22 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
23 known that Plaintiffs and the other members of the CALIFORNIA CLASS are under
24 compensated for all time worked. As a result, Plaintiffs and other CALIFORNIA CLASS
25 Members forfeit time worked by working without their time being accurately recorded and
26 without compensation at the applicable minimum wage and overtime wage rates. To the extent
27 that the time worked off the clock does not qualify for overtime premium payment,
28 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of

1 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

1 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
2 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
3 for each failure to pay each employee, plus 25 percent of the amount unlawfully
4 withheld.

5 17. DEFENDANT from time to time fails to pay Plaintiffs and members of the
6 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
7 period in accordance with Cal. Lab. Code § 204(d), including but not limited to the “Other”
8 regular wage payment.

9 18. DEFENDANT underpays sick pay wages to Plaintiffs and other CALIFORNIA
10 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal.
11 Lab. Code Section 246. Specifically, Plaintiffs and other non-exempt employees earn non-
12 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
13 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
14 to Plaintiffs and other CALIFORNIA CLASS Members at their base rates of pay.

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

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

25 21. As a pattern and practice, DEFENDANT regularly failed to pay Plaintiffs and
26 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting
27 time penalties pursuant to Cal. Lab. Code Section 203. Further, Plaintiffs is informed and
28 believes and based thereon alleges that such failure to pay sick pay at regular rate was willful,
such that Plaintiffs and members of the CALIFORNIA CLASS whose employment has

1 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

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

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

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

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

4 25. Specifically as to Plaintiffs, DEFENDANT fails to provide all the legally required
5 off-duty meal and rest breaks to Plaintiffs as required by the applicable Wage Order and Labor
6 Code and failed to pay Plaintiffs all minimum and overtime wages due to Plaintiffs.
7 DEFENDANT does not have a policy or practice which provided timely off-duty meal and rest
8 breaks to Plaintiffs and also fails to compensate Plaintiffs for Plaintiffs's missed meal and rest
9 breaks. The nature of the work performed by the Plaintiffs does not prevent Plaintiffs from
10 being relieved of all of his duties for the legally required off-duty meal periods. As a result,
11 DEFENDANT's failure to provide Plaintiffs with the legally required meal periods is evidenced
12 by DEFENDANT's business records. Furthermore, specifically as to Plaintiffs, On November
13 9th, 2022, Plaintiffs complained to DEFENDANT and the Labor and Workforce Development
14 Agency via a certified letter and a copy of this Class Action Complaint regarding Violations of
15 California's wage and hour laws and the Private Attorney General Act, specifically Cal. Labor
16 Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512,
17 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
18 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide
19 Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To
20 California Labor Code Section 2699.5. Plaintiffs's complaints fell on deaf ears. Continuing
21 through out the rest of Plaintiffs's employment, Plaintiffs engaged in protected activity by
22 complaining to DEFENDANT of DEFENDANT's illegal employment practices described
23 herein. As a direct consequence of Plaintiffs's complaints to DEFENDANT, DEFENDANT
24 retaliated against Plaintiffs by denying Plaintiffs employment opportunities and promotions
25 which resulted in lost wages. The amount in controversy for Plaintiffs individually does not
26 exceed the sum or value of \$75,000.

27
28 **JURISDICTION AND VENUE**

26. 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 Plaintiffs and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

27. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because Plaintiffs 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

28. Plaintiffs 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 who were classified as non-exempt in the State of California (the "CALIFORNIA CLASS") during the period January 27, 2019 to the earlier of preliminary approval or May 12, 2024 (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).

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

30. 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 Plaintiffs and other CALIFORNIA CLASS Members, even though DEFENDANT

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

3 31. 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 procedure
6 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in
7 place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid
8 as required by law. This common business practice is applicable to each and every
9 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
10 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as
11 causation, damages, and reliance are not elements of this claim.

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

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

- 16 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
17 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 Plaintiffs 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 employees;
22 and,
- 23 (b) Committing an act of unfair competition in violation of the UCL, by
24 failing to provide the Plaintiffs and the other members of the
25 CALIFORNIA CLASS with the legally required meal and rest periods.

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

- 28 (a) The persons who comprise the CALIFORNIA CLASS are so numerous

1 that the joinder of all such persons is impracticable and the disposition of
2 their claims as a class will benefit the parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
4 that are raised in this Complaint are common to the CALIFORNIA
5 CLASS will apply to every member of the CALIFORNIA CLASS;

6 (c) The claims of the representative Plaintiffs are typical of the claims of each
7 member of the CALIFORNIA CLASS. Plaintiffs, like all the other
8 members of the CALIFORNIA CLASS, was classified as a non-exempt
9 employee paid on an hourly basis who was subjected to the
10 DEFENDANT's deceptive practice and policy which failed to provide the
11 legally required meal and rest periods to the CALIFORNIA CLASS and
12 thereby underpaid compensation to Plaintiffs and CALIFORNIA CLASS.
13 Plaintiffs sustained economic injury as a result of DEFENDANT's
14 employment practices. Plaintiffs and the members of the CALIFORNIA
15 CLASS were and are similarly or identically harmed by the same
16 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT;
17 and,

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

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

27 (a) Without class certification and determination of declaratory, injunctive,
28 statutory and other legal questions within the class format, prosecution of

1 separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA CLASS which would establish
5 incompatible standards of conduct for the parties opposing the
6 CALIFORNIA CLASS; and/or,

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

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

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

25 (c) Common questions of law and fact exist as to the members of the
26 CALIFORNIA CLASS, with respect to the practices and violations of
27 California law as listed above, and predominate over any question
28 affecting only individual CALIFORNIA CLASS Members, and a Class

1 Action is superior to other available methods for the fair and efficient
2 adjudication of the controversy, including consideration of:

3 1) The interests of the members of the CALIFORNIA CLASS in
4 individually controlling the prosecution or defense of separate
5 actions in that the substantial expense of individual actions will be
6 avoided to recover the relatively small amount of economic losses
7 sustained by the individual CALIFORNIA CLASS Members when
8 compared to the substantial expense and burden of individual
9 prosecution of this litigation;

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

12 A. Inconsistent or varying adjudications with respect to
13 individual members of the CALIFORNIA CLASS, which
14 would establish incompatible standards of conduct for the
15 DEFENDANT; and/or,

16 B. Adjudications with respect to individual members of the
17 CALIFORNIA CLASS would as a practical matter be
18 dispositive of the interests of the other members not parties
19 to the adjudication or substantially impair or impede their
20 ability to protect their interests;

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

27 4) A class action is superior to other available methods for the fair
28 and efficient adjudication of this litigation because class treatment

1 will obviate the need for unduly and unnecessary duplicative
2 litigation that is likely to result in the absence of certification of
3 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 the CALIFORNIA CLASS for the injuries sustained;

2 (g) DEFENDANT has acted or refused to act on grounds generally applicable
3 to the CALIFORNIA CLASS, thereby making final class-wide relief
4 appropriate with respect to the CALIFORNIA CLASS as a whole;

5 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
6 the business records of DEFENDANT; and,

7 (i) Class treatment provides manageable judicial treatment calculated to bring
8 a efficient and rapid conclusion to all litigation of all wage and hour
9 related claims arising out of the conduct of DEFENDANT as to the
10 members of the CALIFORNIA CLASS.

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

16
17 **THE CALIFORNIA LABOR SUB-CLASS**

18 38. Plaintiffs further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
19 Eighth causes Action on behalf of a California sub-class, defined as all members of the
20 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California,
21 including any employees staffed with DEFENDANT by a third party, and classified as hourly
22 non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") during the period January
23 27, 2019 through May 12, 2024 (the "CALIFORNIA LABOR SUB-CLASS PERIOD")
24 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim
25 of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
26 (\$5,000,000.00).

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

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

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

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

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

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

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

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

4 43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
5 under California law by:

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

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

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

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

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

28 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse Plaintiffs and the

CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

44. 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 Plaintiffs are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. Plaintiffs, like all the other members of the CALIFORNIA LABOR SUB-CLASS, 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. Plaintiffs sustained economic injury as a result of DEFENDANT's employment practices. Plaintiffs and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,
- (d) The representative Plaintiffs will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative Plaintiffs and the members of the CALIFORNIA LABOR

1 SUB-CLASS that would make class certification inappropriate. Counsel
2 for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the
3 claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

26 (c) Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28 violations of California Law as listed above, and predominate over any

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

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

representative; and,

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

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

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

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

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

21 **(By Plaintiffs and the CALIFORNIA CLASS and Against All Defendants)**

22 47. Plaintiffs, and the other members of the CALIFORNIA CLASS, reallege and
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

25 48. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
26 Code § 17021.

27 49. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

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

7 Cal. Bus. & Prof. Code § 17203.

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

16 51. By the conduct alleged herein, DEFENDANT's practices were unlawful and
17 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
18 unscrupulous or substantially injurious to employees, and were without valid justification or
19 utility for which this Court should issue equitable and injunctive relief pursuant to Section
20 17203 of the California Business & Professions Code, including restitution of wages wrongfully
21 withheld.

22 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
24 meal and rest periods, the required amount of compensation for missed meal and rest periods
25 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
26 all necessary business expenses incurred, and failed to provide Standards Act overtime wages
27 due for overtime worked as a result of failing to include non-discretionary incentive
28 compensation into their regular rates of pay for purposes of computing the proper overtime pay

1 due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,
2 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et*
3 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
4 & Prof. Code § 17203, including restitution of wages wrongfully withheld.

5 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
6 unfair and deceptive in that DEFENDANT's employment practices caused Plaintiffs and the
7 other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

9 54. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
10 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
11 all legally required meal breaks to Plaintiffs and the other members of the CALIFORNIA
12 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

13 55. Therefore, Plaintiffs demands on behalf of himself and on behalf of each
14 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
15 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
16 for each workday in which a second off-duty meal period was not timely provided for each ten
17 (10) hours of work.

18 56. Plaintiffs further demands on behalf of himself and each member of the
19 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
20 duty paid rest period was not timely provided as required by law.

21 57. By and through the unlawful and unfair business practices described herein,
22 DEFENDANT has obtained valuable property, money and services from Plaintiffs and the other
23 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has
24 deprived them of valuable rights and benefits guaranteed by law and contract, all to the
25 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
26 to unfairly compete against competitors who comply with the law.

27 58. All the acts described herein as violations of, among other things, the Industrial
28 Welfare Commission Wage Orders, the California Code of Regulations, and the California

1 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
2 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
3 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

4 59. Plaintiffs and the other members of the CALIFORNIA CLASS are entitled to, and
5 do, seek such relief as may be necessary to restore to them the money and property which
6 DEFENDANT has acquired, or of which Plaintiffs and the other members of the CALIFORNIA
7 CLASS have been deprived, by means of the above described unlawful and unfair business
8 practices, including earned but unpaid wages for all time worked.

9 60. Plaintiffs and the other members of the CALIFORNIA CLASS are further entitled
10 to, and do, seek a declaration that the described business practices are unlawful, unfair and
11 deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging
12 in any unlawful and unfair business practices in the future.

13 61. Plaintiffs and the other members of the CALIFORNIA CLASS have no plain,
14 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
15 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
16 As a result of the unlawful and unfair business practices described herein, Plaintiffs and the
17 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
18 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
19 engage in these unlawful and unfair business practices.

20
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

24 **(By Plaintiffs and the CALIFORNIA LABOR SUB-CLASS**
25 **and Against All Defendants)**

26 62. Plaintiffs, and the other members of the CALIFORNIA LABOR SUB- CLASS,
27 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
28 of this Complaint.

1 63. Plaintiffs and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
3 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
4 accurately calculate and pay minimum wages to Plaintiffs and CALIFORNIA CLASS
5 Members.

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

8 65. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
9 commission is the minimum wage to be paid to employees, and the payment of a less wage than
10 the minimum so fixed is unlawful.

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

13 67. DEFENDANT maintained a wage practice of paying Plaintiffs and the other
14 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
15 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
16 intentionally deny timely payment of wages due to Plaintiffs and the other members of the
17 CALIFORNIA LABOR SUB-CLASS.

18 68 DEFENDANT's unlawful wage and hour practices manifested, without
19 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
20 implementing a policy and practice that denies accurate compensation to Plaintiffs and the other
21 members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

22 69. In committing these violations of the California Labor Code, DEFENDANT
23 inaccurately calculated the correct time worked and consequently underpaid the actual time
24 worked by Plaintiffs and other members of the CALIFORNIA LABOR SUB-CLASS.
25 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
26 benefits in violation of the California Labor Code, the Industrial Welfare Commission
27 requirements and other applicable laws and regulations.

28 70. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,

1 Plaintiffs and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
2 the correct minimum wage compensation for their time worked for DEFENDANT.

3 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
4 required, permitted or suffered Plaintiffs and CALIFORNIA LABOR SUB-CLASS Members
5 to work without paying them for all the time they were under DEFENDANT's control. During
6 the CALIFORNIA LABOR SUB-CLASS PERIOD, Plaintiffs and the other members of the
7 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled
8 to, constituting a failure to pay all earned wages.

9 72. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
10 compensation to Plaintiffs and the other members of the CALIFORNIA LABOR SUB-CLASS
11 for the true time they worked, Plaintiffs and the other members of the CALIFORNIA LABOR
12 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which
13 are presently unknown to them and which will be ascertained according to proof at trial.

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

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

28 75. Plaintiffs and the other members of the CALIFORNIA LABOR SUB-CLASS

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

11 12 **THIRD CAUSE OF ACTION**

13 **For Failure To Pay Overtime Compensation**

14 **[Cal. Lab. Code § 510]**

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

17 76. Plaintiffs, and the other members of the CALIFORNIA LABOR SUB-CLASS,
18 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs
19 of this Complaint.

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

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

28 79. Cal. Lab. Code § 510 further provides that employees in California shall not be

1 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
2 unless they receive additional compensation beyond their regular wages in amounts specified
3 by law.

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

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

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

19 83. In committing these violations of the California Labor Code, DEFENDANT
20 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
21 Plaintiffs and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in
22 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other
24 applicable laws and regulations.

25 84. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
26 the Plaintiffs and the other members of the CALIFORNIA LABOR SUB-CLASS did not
27 receive full compensation for overtime worked.

28 85. Cal. Lab. Code § 515 sets out various categories of employees who are exempt

1 from the overtime requirements of the law. None of these exemptions are applicable to the
2 Plaintiffs and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
3 Plaintiffs and the other members of the CALIFORNIA LABOR SUB-CLASS were not subject
4 to a valid collective bargaining agreement that would preclude the causes of action contained
5 herein this Complaint. Rather, Plaintiffs brings this Action on behalf of himself and the
6 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
7 non-waiveable rights provided by the State of California.

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

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

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

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

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

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

20
21 **FOURTH CAUSE OF ACTION**

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

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

24 **(By Plaintiffs and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**

26 92. Plaintiffs, and the other members of the CALIFORNIA LABOR SUB-CLASS,
27 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
28 of this Complaint.

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

101. 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.

102. From time to time, DEFENDANT also fails to provide Plaintiffs 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 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Plaintiffs and CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT provided to

1 Plaintiffs and other CALIFORNIA LABOR SUB-CLASS Members failed to identify such
2 information. More specifically, the wage statements failed to identify the accurate total
3 hours worked each pay period. When the hours shown on the wage statements were added
4 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
5 Lab. Code 226(a)(2). Additionally, DEFENDANT violated Cal. Lab. Code Section
6 226(a)(9) by failing to list the hours worked and the hourly rates for, including but not
7 limited to, the “Other” wage payments. Aside, from the violations listed above in this
8 paragraph, DEFENDANT fails to issue to Plaintiffs an itemized wage statement that lists all
9 the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
10 time to time provides Plaintiffs and the other members of the CALIFORNIA LABOR SUB-
11 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

24 **SEVENTH CAUSE OF ACTION**

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

26 **[Cal. Lab. Code § 2802]**

27 **(By Plaintiffs and the CALIFORNIA LABOR SUB-CLASS and Against All**

Defendants)

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

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

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

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

107. Plaintiffs therefore demands reimbursement for expenditures or losses

1 incurred by himself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
2 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
3 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

4
5 **EIGHTH CAUSE OF ACTION**

6 **For Failure to Pay Sick Pay Wages**

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

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

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

12 109.. Cal Lab. Code § 233 provides that an employer must permit an employee to
13 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
14 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
15 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
16 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
17 right to sick pay wages, which an employer must calculate and compensate based on one of
18 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
19 same manner as the regular rate of pay for the workweek in which the employee uses paid
20 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
21 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
22 total wages, not including overtime premium pay, by the employee's total hours worked in
23 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
24 233, employees may sue to recover underpaid sick pay wages as damages.

25 110.. As a matter of policy and practice, DEFENDANT pays sick pay wages to
26 Plaintiffs and the other members of the CALIFORNIA LABOR SUB-CLASS at the
27 incorrect rate of pay. Plaintiffs and the other members of the CALIFORNIA LABOR-SUB-
28 CLASS regularly use accrued sick leave in the workweeks in which they also earn non-

1 hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
2 wages to Plaintiffs and the other members of the CALIFORNIA LABOR-SUB-CLASS at
3 the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
4 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
5 employee's total wages, not including overtime premium pay, by the employee's total hours
6 worked in the full pay periods of the prior 90 days of employment. As a result,
7 DEFENDANT underpaid sick pay wages to Plaintiffs and the other members of the
8 CALIFORNIA LABOR-SUB-CLASS.

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

27 112. As alleged herein and as a matter of policy and practice, DEFENDANT
28 routinely underpays sick pay wages and thus did not timely pay Plaintiffs and the other

1 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
2 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
3 among other Labor Code provisions. Plaintiffs is informed and believes that DEFENDANT
4 was advised by skilled lawyers and knew, or should have known, of the mandates of the
5 Labor Code as it relates to Plaintiffs's allegations, especially since the California Supreme
6 Court has explained that "[c]ourts have recognized that 'wages' also include those benefits
7 to which an employee is entitled as a part of his or her compensation, including money,
8 room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40
9 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully fails to timely
10 pay Plaintiffs and the other members of the CALIFORNIA LABOR-SUB-CLASS all sick
11 pay wages due, DEFENDANT is subject to applicable penalties.

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

17 **NINTH CAUSE OF ACTION**

18 **Retaliation**

19 **[Violation of Cal. Lab. Code § 1102.5, *et seq.*]**

20 **(By Plaintiffs Against All Defendants)**

21 114. Plaintiffs realleges and incorporates by reference, as though fully set forth
22 herein, the prior paragraphs of this Complaint.

23 115. At all relevant times, Labor Code section 1102.5 was in effect and was
24 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against
25 any employee, including Plaintiffs, for raising complaints of illegality and/or belief that the
26 employee may disclose illegality.

27 116. On November 9th, 2022, Plaintiffs complained to DEFENDANT and the Labor
28 and Workforce Development Agency via a certified letter and a copy of this Class Action

1 Complaint regarding Violations of California's wage and hour laws and the Private Attorney
2 General Act, specifically Cal. Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a),
3 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code
4 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title
5 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare
6 Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5. Plaintiffs's
7 complaints fell on deaf ears. Continuing through out the rest of Plaintiffs's employment,
8 Plaintiffs engaged in protected activity by complaining to DEFENDANT of

9 DEFENDANT's illegal employment practices described herein. As a direct consequence of
10 Plaintiffs's complaints to DEFENDANT, DEFENDANT retaliated against Plaintiffs by
11 denying Plaintiffs employment opportunities and promotions which resulted in lost wages

12 117. As a proximate result of DEFENDANT'S willful, knowing, and intentional
13 violation(s) of Labor Code section 1102.5, Plaintiffs has suffered and continues to suffer
14 humiliation, emotional distress, and mental and physical pain and anguish, all to his damage
15 in a sum according to proof.

16 118. As a result of DEFENDANT'S adverse employment actions against Plaintiffs,
17 Plaintiffs has suffered general and special damages in sums according to proof.

18 119. DEFENDANT'S misconduct was committed intentionally, in a malicious,
19 oppressive manner, and fraudulent manner entitling Plaintiffs to punitive damages against
20 defendants.

21 120. As a proximate result of DEFENDANT'S willful, knowing, and intentional
22 violation(s) of Labor Code section 1102.5, Plaintiffs has suffered and continues to suffer
23 humiliation, emotional distress, and mental and physical pain and anguish, all to his damage
24 in a sum according to proof.

25 121. As a result of DEFENDANT'S adverse employment actions against Plaintiffs,
26 Plaintiffs has suffered general and special damages in sums according to proof.

27 122. DEFENDANT'S misconduct was committed intentionally, in a malicious,
28 oppressive manner, and fraudulent manner entitling Plaintiffs to punitive damages against

1 defendants.

2 **TENTH CAUSE OF ACTION**

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

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

5 **(By Plaintiffs and Against All Defendants)**

6 123. Plaintiffs realleges and incorporates by this reference, as though fully set forth
7 herein, the prior paragraphs of this Complaint.

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

18 125. Plaintiffs, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney
20 General Act, brings this Representative Action on behalf of the State of California with
21 respect to himself and all individuals who are or previously were employed by Defendant
22 who were classified as non-exempt in the State of California ("AGGRIEVED
23 EMPLOYEES") during the time period November 9, 2021 to the earlier of preliminary
24 approval or May 12, 2024 (the "PAGA PERIOD").

25 126. On November 9, 2022, Plaintiffs gave written notice by electronic mail to the
26 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
28 Labor Code § 2699.3. The statutory waiting period for Plaintiffs to add these allegations to

1 the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiffs may now
2 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
3 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 127.. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide Plaintiffs and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
7 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
8 (d) failed to pay overtime and sick pay wages, (e) failed to reimburse employees for required
9 expenses, (f) failed to provide wages when due, and (g) failed to provide seating, all in
10 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
11 et seq., 210, 221, 226(a), 226.7, 227.3, 246 et seq., 351, 510, 512, 558(a)(1)(2), 1194, 1197,
12 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision
13 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide
14 Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a
15 result of such conduct.¹ Plaintiffs hereby seeks recovery of civil penalties as prescribed by
16 the Labor Code Private Attorney General Act of 2004 as the representative of the State of
17 California for the illegal conduct perpetrated on Plaintiffs and the other AGGRIEVED
18 EMPLOYEES.

19 128. All of the conduct and violations alleged herein occurred during the PAGA
20 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
21 Plaintiffs during the PAGA PERIOD, Plaintiffs seeks penalties for those violations that
22 affected other AGGRIEVED EMPLOYEES pursuant to Carrington v. Starbucks Corp. 2018
23 AJDAR 12157 (Certified for Publication 12/19/18).

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs prays for judgment against each Defendant, jointly and
26

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

severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum, overtime and sick pay compensation due Plaintiffs and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

- 1 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
2 1197; and,
- 3 F) The amount of the expenses Plaintiffs and each member of the CALIFORNIA
4 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
5 costs of suit.
- 6 3. On behalf of Plaintiffs for the Ninth Cause of Action:
- 7 A) For all special damages which were sustained as a result of DEFENDANT's
8 conduct, including, but not limited to, back pay, front pay, lost compensation and
9 job benefits that Plaintiffs Lucchese would have received but for the retaliatory
10 practices of DEFENDANT; and,
- 11 B) For all exemplary damages, according to proof, which were sustained as a result
12 of DEFENDANT's conduct.
- 13 4. On behalf of the State of California and with respect to all AGGRIEVED
14 EMPLOYEES:
- 15 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
16 General Act of 2004.
- 17 5. On all claims:
- 18 A) An award of interest, including prejudgment interest at the legal rate;
19 B) Such other and further relief as the Court deems just and equitable; and,
20 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
21 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
22 and/or §2802.

23
24 Dated: Dated: July 2, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
25

26
27 By: /s/ Nicholas J. De Blouw
28 Norman B. Blumenthal
Kyle R. Nordrehaug

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Nicholas J. De Blouw
Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

Dated: July 2, 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 Plaintiffs