

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

ERIC HARROLD, an individual, on behalf of himself
and on behalf of all persons similarly situated,

Plaintiff,

vs.

SPARTAN EDUCATION GROUP, LLC, a Limited
Liability Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CVRI2300320

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

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Spartan Education Group, LLC (“DEFENDANT”) is a limited liability
7 corporation that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California.

9 2. DEFENDANT owns and operates an Aeronautics and Technology college in Riverside,
10 California.

11 3. PLAINTIFF is currently employed by DEFENDANT in California and started his
12 employment on February 1, 2022. He is at all times classified by DEFENDANT as a non-exempt employee,
13 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
14 and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined
16 as all individuals who are or previously were employed by DEFENDANT Spartan Education Group, LLC,
17 in the State of California, on a non-exempt basis (the “CALIFORNIA CLASS”) from January 19, 2019 to
18 the earlier of preliminary approval or January 5, 2024, excluding those employees who signed severance
19 agreements (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim
20 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

18 19 **THE CONDUCT**

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

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

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

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

1 and meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS Members by
2 DEFENDANT.

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

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

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

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

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

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

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

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

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

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

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

19 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-

1 discretionary incentive wages which increased their regular rate of pay. However, when sick pay was
2 paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA CLASS, as
3 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

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

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

19 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
20 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by
21 the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their
22 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required
23 to indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
24 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
25 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
26 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless
27 the employee, at the time of obeying the directions, believed them to be unlawful."
28

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

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

JURISDICTION AND VENUE

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

26. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or

1 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in
2 this County against members of the CALIFORNIA CLASS.

3
4 **THE CALIFORNIA CLASS**

5 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
6 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
7 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
8 are or previously were employed by DEFENDANT Spartan Education Group, LLC, in the State of
9 California, on a non-exempt basis (the "CALIFORNIA CLASS") from January 19, 2019 to the earlier of
10 preliminary approval or January 5, 2024, excluding those employees who signed severance agreements
11 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
12 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

1 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
2 Members is impracticable.

3 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law
4 by:

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

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

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

1 of DEFENDANT's employment practices. PLAINTIFF and the members of the
2 CALIFORNIA CLASS were and are similarly or identically harmed by the same
3 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,
4 (d) The representative PLAINTIFF will fairly and adequately represent and protect
5 the interest of the CALIFORNIA CLASS, and has retained counsel who are
6 competent and experienced in Class Action litigation. There are no material
7 conflicts between the claims of the representative PLAINTIFF and the members
8 of the CALIFORNIA CLASS that would make class certification inappropriate.
9 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
10 CALIFORNIA CLASS Members.

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

- 13 (a) Without class certification and determination of declaratory, injunctive, statutory
14 and other legal questions within the class format, prosecution of separate actions
15 by individual members of the CALIFORNIA CLASS will create the risk of:
- 16 1) Inconsistent or varying adjudications with respect to individual members
17 of the CALIFORNIA CLASS which would establish incompatible
18 standards of conduct for the parties opposing the CALIFORNIA
19 CLASS; and/or,
- 20 2) Adjudication with respect to individual members of the CALIFORNIA
21 CLASS which would as a practical matter be dispositive of interests of
22 the other members not party to the adjudication or substantially impair or
23 impede their ability to protect their interests.
- 24 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on
25 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
26 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
27 DEFENDANT failed to pay all wages due to members of the CALIFORNIA
28 CLASS as required by law;

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

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

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

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

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

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the

1 adjudication or substantially impair or impede their ability to
2 protect their interests;

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

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

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

- 16 (a) The questions of law and fact common to the CALIFORNIA CLASS
17 predominate over any question affecting only individual CALIFORNIA CLASS
18 Members because the DEFENDANT's employment practices are applied with
19 respect to the CALIFORNIA CLASS;
- 20 (b) A Class Action is superior to any other available method for the fair and efficient
21 adjudication of the claims of the members of the CALIFORNIA CLASS because
22 in the context of employment litigation a substantial number of individual
23 CALIFORNIA CLASS Members will avoid asserting their rights individually
24 out of fear of retaliation or adverse impact on their employment;
- 25 (c) The members of the CALIFORNIA CLASS are so numerous that it is
26 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 27
28

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

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

26
27 **THE CALIFORNIA LABOR SUB-CLASS**
28

1 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
2 Ninth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
3 CLASS who are or previously were employed by DEFENDANT in California, including any
4 employees staffed with DEFENDANT by a third party, and classified as non exempt employees (the
5 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing
6 of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-
7 CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
8 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
9 (\$5,000,000.00).

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

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

26 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
27 CALIFORNIA LABOR SUB-CLASS Members is impracticable.
28

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

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

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

- 17 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and
18 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
19 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code
20 § 1194;
21 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
22 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
23 SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable
24 pursuant to Cal. Lab. Code §§ 1194 and 1197;
25 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
27 statement in writing showing the corresponding correct amount of wages earned
28 by the employee;

- 1 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS with all
3 legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
4 legally required off-duty rest breaks;
- 5 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
6 employee is discharged or quits from employment, the employer must pay the
7 employee all wages due without abatement, by failing to tender full payment
8 and/or restitution of wages owed or in the manner required by California law to
9 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
10 their employment; and,
- 11 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
12 CALIFORNIA LABOR SUB-CLASS members with necessary expenses
13 incurred in the discharge of their job duties.

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

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

CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

- 1 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
2 refused to act on grounds generally applicable to the CALIFORNIA LABOR
3 SUB-CLASS, making appropriate class-wide relief with respect to the
4 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to
5 pay all wages due. Including the correct wages for all time worked by the
6 members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- 7 (c) Common questions of law and fact predominate as to the members of the
8 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
9 violations of California Law as listed above, and predominate over any question
10 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
11 Class Action is superior to other available methods for the fair and efficient
12 adjudication of the controversy, including consideration of:
- 13 1) The interests of the members of the CALIFORNIA LABOR SUB-
14 CLASS in individually controlling the prosecution or defense of separate
15 actions in that the substantial expense of individual actions will be
16 avoided to recover the relatively small amount of economic losses
17 sustained by the individual CALIFORNIA LABOR SUB-CLASS
18 Members when compared to the substantial expense and burden of
19 individual prosecution of this litigation;
- 20 2) Class certification will obviate the need for unduly duplicative litigation
21 that would create the risk of:
- 22 A. Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA LABOR SUB-CLASS, which
24 would establish incompatible standards of conduct for the
25 DEFENDANT; and/or,
- 26 B. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28 matter be dispositive of the interests of the other members not

parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

45. 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;

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

24
25 **FIRST CAUSE OF ACTION**

26 **For Unlawful Business Practices**

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

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

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

3 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §
4 17021.

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

8 Any person who engages, has engaged, or proposes to engage in unfair competition may
9 be enjoined in any court of competent jurisdiction. The court may make such orders or
10 judgments, including the appointment of a receiver, as may be necessary to prevent the
11 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.

12 Cal. Bus. & Prof. Code § 17203.

13 49. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
14 business practice which violates California law, including but not limited to, the applicable Industrial
15 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
16 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor Standards Act
17 and federal regulations promulgated thereunder, for which this Court should issue declaratory and other
18 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy
19 the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

25 51. By the conduct alleged herein, DEFENDANT’s practices were deceptive and fraudulent
26 in that DEFENDANT’s policy and practice failed to provide the legally mandated meal and rest periods,
27 the required amount of compensation for missed meal and rest periods and overtime and minimum
28 wages owed, failed to timely pay wages, and failed to reimburse all necessary business expenses

1 incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime worked as a
2 result of failing to include non-discretionary incentive compensation into their regular rates of pay for
3 purposes of computing the proper overtime pay due to a business practice that cannot be justified,
4 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation
5 of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
6 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

22 56. By and through the unlawful and unfair business practices described herein,
23 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other
24 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived
25 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
26 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
27 against competitors who comply with the law.
28

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

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

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

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

22
23 **SECOND CAUSE OF ACTION**

24 **For Failure To Pay Minimum Wages**

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

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

27 **and Against All Defendants)**
28

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

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

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

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

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

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

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

24 68. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately calculated the correct time worked and consequently underpaid the actual time worked by
26 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in
27 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
28

1 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
2 regulations.

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

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

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

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

23 73. In performing the acts and practices herein alleged in violation of California labor laws,
24 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
25 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act
26 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the
28 consequences to them, and with the despicable intent of depriving them of their property and legal

1 rights, and otherwise causing them injury in order to increase company profits at the expense of these
2 employees.

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

13 14 **THIRD CAUSE OF ACTION**

15 **For Failure To Pay Overtime Compensation**

16 **[Cal. Lab. Code § 510]**

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

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

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

26 77. 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

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

4 79. 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 costs of
6 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than
7 those fixed by the Industrial Welfare Commission is unlawful.

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

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

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

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

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

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

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

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

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

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

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

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

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21 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

24
25 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

22 **SIXTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 226]**

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

26 98. PLAINTIFF, 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 of this
28 Complaint.

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

- 3 (1) gross wages earned,
4 (2) total hours worked by the employee, except for any employee whose compensation is solely
5 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
6 515 or any applicable order of the Industrial Welfare Commission,
7 (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on
8 a piece-rate basis,
9 (4) all deductions, provided that all deductions made on written orders of the employee may be
10 aggregated and shown as one item,
11 (5) net wages earned,
12 (6) the inclusive dates of the period for which the employee is paid,
13 (7) the name of the employee and his or her social security number, except that by January 1,
14 2008, only the last four digits of his or her social security number or an employee identification
15 number other than a social security number may be shown on the itemized statement,
16 (8) the name and address of the legal entity that is the employer, and
17 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate by the employee.

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

1 provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage
2 statements which violated Cal. Lab. Code § 226.

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

14 **SEVENTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 2802]**

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

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

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

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

26 104. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
27 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
28 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.

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

14 105. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
15 himself and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for
16 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
17 and costs under Cal. Lab. Code § 2802.

18 **EIGHTH CAUSE OF ACTION**

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

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

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

22 **and Against All Defendants)**

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

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

27 As used in this article:

28 (a) "Wages" includes all amounts for labor performed by employees of every
description, whether the amount is fixed or ascertained by the standard of time, task,

1 piece, Commission basis, or other method of calculation.

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

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

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

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

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

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

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

25 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
26 Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by
27 law.

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

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1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

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

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

5 **and Against All Defendants)**

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

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

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

1 hours worked in the full pay periods of the prior 90 days of employment. As a result, DEFENDANT
2 underpaid sick pay wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-
3 CLASS.

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

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

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

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

8
9 **TENTH CAUSE OF ACTION**

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

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

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

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

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

24 122. PLAINTIFF, and such persons that may be added from time to time who satisfy the
25 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
26 this Representative Action on behalf of the State of California with respect to himself and all individuals
27 who were employed by DEFENDANT in California, and classified as a non-exempt employees
28

1 (“AGGRIEVED EMPLOYEES”) at any time during the time period of November 1, 2021 to the earlier
2 of preliminary approval or January 5, 2024 (the "PAGA PERIOD").

3 123. November 1, 2022, PLAINTIFF gave written notice by electronic mail to the Labor and
4 Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific
5 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory
6 waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
7 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
8 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
9 EMPLOYEES as herein defined.

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

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

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

1
2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as
4 follows:

5 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
2 applicable IWC Wage Order;
- 3 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- 4 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR
5 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
- 6 G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a
7 penalty from the due date thereof at the same rate until paid or until an action therefore is
8 commenced, in accordance with Cal. Lab. Code § 203.

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

- 10 A) Recovery of civil penalties as prescribed by the Labor Code Private
11 Attorneys General Act of 2004; and,
- 12 B) An award of attorneys' fees and cost of suit, as allowable under the
13 law, including, but not limited to, pursuant to Labor Code §2699.

14 4. On all claims:

- 15 A) An award of interest, including prejudgment interest at the legal rate;
- 16 B) Such other and further relief as the Court deems just and equitable; and,
- 17 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

19
20 Dated: December 07, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
21
22

23 By: /s/ Nicholas J. D Blouw
24 Nicholas J. De Blouw
25 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: December 07, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Nicholas J. De Blouw
Attorneys for Plaintiff