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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

11/07/2024

Clerk of the Court

BY: VERA MU

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

GELENIA SANCHEZ and JOHN TELLEZ,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

HOMEBRIDGE, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-23-604614

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246;
10. DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA;
11. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF CAL. GOV. CODE § 12940(n);
12. FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF CAL. GOV. CODE § 12940(m);
13. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and
14. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*].

DEMAND FOR A JURY TRIAL

1 Plaintiffs Gelenia Sanchez and John Tellez (“PLAINTIFFS”), individuals, on behalf of
2 themselves and all other similarly situated current and former employees allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge,
4 the following:

5
6 **THE PARTIES**

7 1. Homebridge, Inc. (“DEFENDANT”) is a California Corporation that at all
8 relevant times mentioned herein conducted and continues to conduct substantial business in the
9 state of California.

10 2. DEFENDANT provides in home care giving services in California.

11 3. Plaintiff Sanchez was employed by DEFENDANT in California from March of
12 2002 to October 28, 2022 and was at all times classified by DEFENDANT as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

15 4. Plaintiff Tellez was employed by DEFENDANT in California from 2019 to
16 December 29, 2023 and was at all times classified by DEFENDANT as a non-exempt
17 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
18 payment of minimum and overtime wages due for all time worked.

19 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
20 class, defined as all individuals who are or previously were employed by DEFENDANT in
21 California, including any employees staffed with DEFENDANT by a third party, and classified
22 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
23 beginning four (4) years prior to the filing of this Complaint and ending on the date as
24 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
25 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
26 (\$5,000,000.00).

27 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their

1 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's
2 policy and practice which failed to lawfully compensate these employees. DEFENDANT's
3 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
4 whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and the
5 other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
7 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA
8 CLASS who have been economically injured by DEFENDANT's past and current unlawful
9 conduct, and all other appropriate legal and equitable relief.

10 7. The true names and capacities, whether individual, corporate, subsidiary,
11 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
12 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious
13 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
14 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
15 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
16 information and belief allege, that the Defendants named in this Complaint, including DOES
17 1 through 50, inclusive, are responsible in some manner for one or more of the events and
18 happenings that proximately caused the injuries and damages hereinafter alleged.

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

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28 ///

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFFS to work while clocked out during what are supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFFS and CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and CALIFORNIA CLASS Members to perform work off the clocking that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

10. State and federal law provides that employees must be paid overtime and meal and rest break premiums at one-and-one-half times their "regular rate of pay."

1 PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an hourly rate
2 plus incentive pay that is tied to specific elements of an employee's performance.

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

18 12. As a result of their rigorous work schedules, PLAINTIFFS and other
19 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
20 off duty meal breaks and were not fully relieved of duty for their meal periods.
21 PLAINTIFFS and other CALIFORNIA CLASS Members were required from time to time
22 to perform work as ordered by DEFENDANT for more than five (5) hours during some
23 shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
24 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal
25 period for some workdays in which these employees were required by DEFENDANT to
26 work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the
27 meal period times to avoid paying penalties to PLAINTIFFS and other CALIFORNIA
28 CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS

1 therefore forfeit meal breaks without additional compensation and in accordance with
2 DEFENDANT's corporate policy and practice.

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

24 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
25 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
26 actual amount of time these employees worked. Pursuant to the Industrial Welfare
27 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and other
28 CALIFORNIA CLASS Members for all time worked, meaning the time during which an

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

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

1 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
2 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
3 § 226.

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

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

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

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

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

26 20. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
27 at the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely
28 earned non-discretionary incentive wages which increased their regular rate of pay.

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

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

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

22 23. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
23 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
24 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct
25 consequence of discharging their duties on behalf of DEFENDANT. Under California
26 Labor Code Section 2802, employers are required to indemnify employees for all expenses
27 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
28 states that "an employer shall indemnify his or her employee for all necessary expenditures

1 or losses incurred by the employee in direct consequence of the discharge of his or her
2 duties, or of his or her obedience to the directions of the employer, even though unlawful,
3 unless the employee, at the time of obeying the directions, believed them to be unlawful."

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

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

25 26. Furthermore, Plaintiff Sanchez came back to work after going on protected
26 leave for her worsening Iritis condition in July of 2022. Upon returning to work in August of
27 2022 and continuing into September and October of 2022, Plaintiff Sanchez experienced
28 severe symptoms including redness, pain, light sensitivity, blurred vision. Plaintiff Sanchez

1 consulted and requested numerous times for an accommodation with DEFENDANT to allow
2 her to remain in the office instead of going out in the field. Plaintiff Sanchez's managers
3 failed to accommodate her requests and brushed off Plaintiff Sanchez's complaints. Plaintiff
4 Sanchez suffered mental and physical issues as a result of the stress caused by
5 DEFENDANT's failure to accommodate her requests. During this time, Plaintiff Sanchez
6 was plagued with ongoing work pressures, obligations, and mistreatment by her supervisors,
7 including but not limited to, falsifying performance reviews and making false accusations
8 about Plaintiff Sanchez's performance. Furthermore, the continuous stress from work
9 caused Plaintiff Sanchez to feel afraid of going into work. Shortly after returning from leave
10 for her eye condition, and after twenty years of employment with DEFENDANT,
11 DEFENDANT terminated Plaintiff Sanchez's employment on October 28, 2022.
12 DEFENDANT claimed Plaintiff Sanchez's termination was based on poor performance, but
13 in reality DEFENDANT's decision and real motivation to terminate Plaintiff Sanchez was in
14 retaliation for Plaintiff Sanchez continuing to request accommodation for disability related
15 situation.

16 27. Moreover, DEFENDANT discriminated against and failed to reasonably
17 accommodate Plaintiff Sanchez for her physical disabilities. Plaintiff Sanchez herein alleges
18 that the actions taken by employees of DEFENDANT against Plaintiff Sanchez occurred
19 within the normal scope and course of these individuals' employment with DEFENDANT.
20 Plaintiff Sanchez further alleges that these employees were Plaintiff Sanchez's supervisors
21 while Plaintiff Sanchez was employed by DEFENDANT. However, Plaintiff Sanchez's
22 request for accommodation fell on deaf ears, as DEFENDANT failed to respond to Plaintiff
23 Sanchez's requests. Ultimately, DEFENDANT never took Plaintiff Sanchez seriously and
24 subsequently terminated her employment on October 28, 2022.

25 28. Prior to filing this action, Plaintiff Sanchez exhausted her administrative
26 remedies by filing a timely administrative complaint with the Department of Fair
27 Employment and Housing ("DFEH") and received a DFEH right-to-sue letter on January 9,
28 2023.

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JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

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

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

1 33. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage
3 Order requirements, and the applicable provisions of California law, intentionally,
4 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
5 meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members,
6 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
7 this work and permits or suffers to permit this work.

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

17 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 36. DEFENDANT violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
22 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
23 and/or deceptively having in place company policies, practices and
24 procedures that failed to record and pay PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS for all time worked, including
26 minimum wages owed and overtime wages owed for work performed
27 by these employees; and,
28

- 1 (b) Committing an act of unfair competition in violation of the UCL, by
2 failing to provide the PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

1 PLAINTIFFS and the members of the CALIFORNIA CLASS that
2 would make class certification inappropriate. Counsel for the
3 CALIFORNIA CLASS will vigorously assert the claims of all
4 CALIFORNIA CLASS Members.

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

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

- 11 1) Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA CLASS which would establish
13 incompatible standards of conduct for the parties opposing the
14 CALIFORNIA CLASS; and/or,
15 2) Adjudication with respect to individual members of the
16 CALIFORNIA CLASS which would as a practical matter be
17 dispositive of interests of the other members not party to the
18 adjudication or substantially impair or impede their ability to
19 protect their interests.

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

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

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

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

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

- 1 3) In the context of wage litigation because a substantial number of
2 individual CALIFORNIA CLASS Members will avoid asserting
3 their legal rights out of fear of retaliation by DEFENDANT,
4 which may adversely affect an individual's job with
5 DEFENDANT or with a subsequent employer, the Class Action
6 is the only means to assert their claims through a representative;
7 and,
8 4) A class action is superior to other available methods for the fair
9 and efficient adjudication of this litigation because class
10 treatment will obviate the need for unduly and unnecessary
11 duplicative litigation that is likely to result in the absence of
12 certification of this action pursuant to Cal. Code of Civ. Proc. §
13 382.

14 39. This Court should permit this action to be maintained as a Class Action
15 pursuant to Cal. 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
18 CLASS Members because the DEFENDANT's employment practices
19 are applied with respect to the CALIFORNIA CLASS;
20 (b) A Class Action is superior to any other available method for the fair
21 and efficient adjudication of the claims of the members of the
22 CALIFORNIA CLASS because in the context of employment litigation
23 a substantial number of individual CALIFORNIA CLASS Members
24 will avoid asserting their rights individually out of fear of retaliation or
25 adverse impact on their employment;
26 (c) The members of the CALIFORNIA CLASS are so numerous that it is
27 impractical to bring all members of the CALIFORNIA CLASS before
28 the Court;

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

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

27 ///

28 ///

THE CALIFORNIA LABOR SUB-CLASS

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

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

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

1 44. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
2 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

18 46. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
19 CLASS under California law by:

- 20 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
21 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
22 CLASS all wages due for overtime worked, for which DEFENDANT is
23 liable pursuant to Cal. Lab. Code § 1194;
- 24 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
25 accurately pay PLAINTIFFS and the members of the CALIFORNIA
26 LABOR SUB-CLASS the correct minimum wage pay for which
27 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 28

- 1 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
2 the members of the CALIFORNIA LABOR SUB-CLASS with an
3 accurate itemized statement in writing showing the corresponding
4 correct amount of wages earned by the employee;
- 5 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
6 PLAINTIFFS and the other members of the CALIFORNIA LABOR
7 SUB-CLASS with all legally required off-duty, uninterrupted thirty
8 (30) minute meal breaks and the legally required off-duty rest breaks;
- 9 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
10 when an employee is discharged or quits from employment, the
11 employer must pay the employee all wages due without abatement, by
12 failing to tender full payment and/or restitution of wages owed or in the
13 manner required by California law to the members of the
14 CALIFORNIA LABOR SUB-CLASS who have terminated their
15 employment; and,
- 16 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
17 and the CALIFORNIA LABOR SUB-CLASS members with necessary
18 expenses incurred in the discharge of their job duties.

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

- 21 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
22 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
23 CLASS Members is impracticable and the disposition of their claims as
24 a class will benefit the parties and the Court;
- 25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
26 issues that are raised in this Complaint are common to the
27 CALIFORNIA LABOR SUB-CLASS and will apply to every member
28 of the CALIFORNIA LABOR SUB-CLASS;

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

13 (d) The representative PLAINTIFFS will fairly and adequately represent
14 and protect the interest of the CALIFORNIA LABOR SUB-CLASS,
15 and have retained counsel who are competent and experienced in Class
16 Action litigation. There are no material conflicts between the claims of
17 the representative PLAINTIFFS and the members of the CALIFORNIA
18 LABOR SUB-CLASS that would make class certification
19 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
20 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
21 CLASS Members.

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

24 (a) Without class certification and determination of declaratory, injunctive,
25 statutory and other legal questions within the class format, prosecution
26 of separate actions by individual members of the CALIFORNIA
27 LABOR SUB-CLASS will create the risk of:
28

- 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.

- (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- (c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-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 LABOR SUB-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

1 CALIFORNIA LABOR SUB-CLASS Members when compared
2 to the substantial expense and burden of individual prosecution
3 of this litigation;

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

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

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

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

22 4) A class action is superior to other available methods for the fair
23 and efficient adjudication of this litigation because class
24 treatment will obviate the need for unduly and unnecessary
25 duplicative litigation that is likely to result in the absence of
26 certification of this action pursuant to Cal. Code of Civ. Proc. §
27 382.
28

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

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

1 making final class-wide relief appropriate with respect to the
2 CALIFORNIA LABOR SUB-CLASS as a whole;

- 3 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
4 ascertainable from the business records of DEFENDANT. The
5 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
6 CLASS Members who worked for DEFENDANT in California at any
7 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
8 (i) Class treatment provides manageable judicial treatment calculated to
9 bring a efficient and rapid conclusion to all litigation of all wage and
10 hour related claims arising out of the conduct of DEFENDANT as to
11 the members of the CALIFORNIA LABOR SUB-CLASS.

12
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

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

17 50. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
18 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
19 this Complaint.

20 51. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
21 Code § 17021.

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

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

1 may be necessary to restore to any person in interest any money or property,
2 real or personal, which may have been acquired by means of such unfair
3 competition.

3 Cal. Bus. & Prof. Code § 17203.

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

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

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

1 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

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

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

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

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

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

25 61. All the acts described herein as violations of, among other things, the
26 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
27 California Labor Code, were unlawful and in violation of public policy, were immoral,
28 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,

1 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
2 *seq.*

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

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

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

20
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 19 **THIRD CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

21 **[Cal. Lab. Code § 510]**

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

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

27 80. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
28 CLASS bring a claim for DEFENDANT's willful and intentional violations of the

1 California Labor Code and the Industrial Welfare Commission requirements for
2 DEFENDANT's failure to pay these employees for all overtime worked, including, work
3 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
4 and/or forty (40) hours in any workweek.

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

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

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

16 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
17 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
18 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
19 including overtime work.

20 85. DEFENDANT's unlawful wage and hour practices manifested, without
21 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
22 implementing a policy and practice that failed to accurately record overtime worked by
23 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
24 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
25 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in
26 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty
27 (40) hours in any workweek.
28

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

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

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

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

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

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

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

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

20 93. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
21 CLASS therefore request recovery of all overtime wages, according to proof, interest,
22 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
23 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
24 extent minimum and/or overtime compensation is determined to be owed to the
25 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
26 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
27 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
28 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS

1 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
2 good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
3 Members are entitled to seek and recover statutory costs.

4
5 **FOURTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

13 95. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
14 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
15 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
16 and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA
17 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
18 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
19 work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members
20 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
21 Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA
22 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
23 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
24 DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a
25 second off-duty meal period in some workdays in which these employees were required by
26 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFFS
27 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
28

1 breaks without additional compensation and in accordance with DEFENDANT's strict
2 corporate policy and practice.

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

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

12
13 **FIFTH CAUSE OF ACTION**

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

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

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

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

21 99. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
22 from time to time required to work in excess of four (4) hours without being provided ten
23 (10) minute rest periods. Further, these employees from time to time were denied their first
24 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
25 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
26 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
27 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

28 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not

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

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

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

13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

21 103.. Cal. Labor Code § 226 provides that an employer must furnish employees
22 with an "accurate itemized" statement in writing showing:

- 23 (1) gross wages earned,
24 (2) total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare Commission,
28 (3) the number of piecerate units earned and any applicable piece rate if the employee
is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,
(5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid,

1 (7) the name of the employee and his or her social security number, except that by
2 January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown on
4 the itemized statement,
(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee.

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

25 105. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
26 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
27 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
28 expended calculating the correct wages for all missed meal and rest breaks and the amount

1 of employment taxes which were not properly paid to state and federal tax authorities.
2 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
3 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
4 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
5 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
6 226, in an amount according to proof at the time of trial (but in no event more than four
7 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
8 CALIFORNIA LABOR SUB-CLASS herein).

9
10 **SEVENTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 2802]**

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

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

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

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

22 108. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
23 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
24 CLASS members for required expenses incurred in the discharge of their job duties for
25 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
26 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
27 limited to, costs related to using their personal cellular phones on behalf of and for the
28

benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones and home offices in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones and home offices for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

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

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

- (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, piece, Commission basis, or other method of calculation.
- (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other

1 agreement if the labor to be paid for is performed personally by the person
2 demanding payment.

3 112.. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer
4 discharges an employee, the wages earned and unpaid at the time of discharge are due and
5 payable immediately.”

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

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

12 114. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR
13 SUB-CLASS Members’ employment contract.

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

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

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

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

1 **NINTH CAUSE OF ACTION**

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

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

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

5 **and Against All Defendants)**

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

9 119. 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
11 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
12 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
13 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
14 right to sick pay wages, which an employer must calculate and compensate based on one of
15 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
16 same manner as the regular rate of pay for the workweek in which the employee uses paid
17 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
18 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
19 total wages, not including overtime premium pay, by the employee's total hours worked in
20 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
21 233, employees may sue to recover underpaid sick pay wages as damages.

22 120. As a matter of policy and practice, DEFENDANT pays sick pay wages to
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the
24 incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-
25 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
26 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
27 wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS
28 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-

1 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total hours
3 worked in the full pay periods of the prior 90 days of employment. As a result,
4 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
5 CALIFORNIA LABOR-SUB-CLASS.

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

24 122. As alleged herein and as a matter of policy and practice, DEFENDANT
25 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
26 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
27 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
28 among other Labor Code provisions. PLAINTIFFS are informed and believe that

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

10 123. Such a pattern, practice, and uniform administration of corporate policy is
11 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-
12 SUB-CLASS to underpaid sick pay wages, including in

13
14 **TENTH CAUSE OF ACTION**

15 **[Disability Discrimination and Retaliation For the Exercise of Rights Guaranteed**

16 **Under the FEHA, Participating in Protected Activities, and/or Opposing**

17 **DEFENDANT's Failure to Provide Such Rights]**

18 **Violation of FEHA Government Section 12900, *et. seq.***

19 **(By Plaintiff Sanchez Against All Defendants)**

20 124. Plaintiff Sanchez realleges and incorporates by reference, as though fully set forth
21 herein, the prior paragraphs of this Complaint.

22 125. Furthermore, Plaintiff Sanchez came back to work after going on protected
23 leave for her worsening Iritis condition in July of 2022. Upon returning to work in August of
24 2022 and continuing into September and October of 2022, Plaintiff Sanchez experienced
25 severe symptoms including redness, pain, light sensitivity, blurred vision. Plaintiff Sanchez
26 consulted and requested numerous times for an accommodation with DEFENDANT to
27 allow her to remain in the office instead of going out in the field. Plaintiff Sanchez's
28 managers failed to accommodate her requests and brushed off Plaintiff Sanchez's

1 complaints. Plaintiff Sanchez suffered mental and physical issues as a result of the stress
2 caused by DEFENDANT's failure to accommodate her requests. During this time, Plaintiff
3 Sanchez was plagued with ongoing work pressures, obligations, and mistreatment by her
4 supervisors, including but not limited to, falsifying performance reviews and making false
5 accusations about Plaintiff Sanchez's performance. Furthermore, the continuous stress from
6 work caused Plaintiff Sanchez to feel afraid of going into work. Shortly after returning from
7 leave for her eye condition, and after twenty years of employment with DEFENDANT,
8 DEFENDANT terminated Plaintiff Sanchez's employment on October 28, 2022.
9 DEFENDANT claimed Plaintiff Sanchez's termination was based on poor performance, but
10 in reality DEFENDANT's decision and real motivation to terminate Plaintiff Sanchez was in
11 retaliation for Plaintiff Sanchez continuing to request accommodation for disability related
12 situation.

13 126. Moreover, DEFENDANT discriminated against and failed to reasonably
14 accommodate Plaintiff Sanchez for her physical disabilities. Plaintiff Sanchez herein alleges
15 that the actions taken by employees of DEFENDANT against Plaintiff Sanchez occurred
16 within the normal scope and course of these individuals' employment with DEFENDANT.
17 Plaintiff Sanchez further alleges that these employees were Plaintiff Sanchez's supervisors
18 while Plaintiff Sanchez was employed by DEFENDANT. However, Plaintiff Sanchez's
19 request for accommodation fell on deaf ears, as DEFENDANT failed to respond to Plaintiff
20 Sanchez's requests. Ultimately, DEFENDANT never took Plaintiff Sanchez seriously and
21 subsequently terminated her employment on October 28, 2022.

22 127. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
23 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
24 including the following bases for liability:

25 128. Taking adverse employment actions against Plaintiff Sanchez, including
26 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
27 otherwise discriminating against Plaintiff Sanchez, in whole or in part on the basis of
28 Plaintiff Sanchez's disability in violation of Government Code Section 12940(a);

1 129. Harassing Plaintiff Sanchez and/or creating a hostile work environment, in
2 whole or in part on the basis of Plaintiff Sanchez's disability, and/or having taken FMLA
3 leave in violation of Government Code Section 12940(j);

4 130. Failing to take all reasonable steps to prevent discrimination and harassment
5 based on disability in violation of Government Code section 12940(k);

6 131. Retaliating against Plaintiff Sanchez for seeking to exercise rights guaranteed
7 under FEHA, participating in protected activities, and/or opposing DEFENDANT's failure
8 to provide such rights, in violation of Government Code Section 12940(h).

9 132. As a proximate result of DEFENDANT's willful, knowing, and intentional
10 discrimination against Plaintiff Sanchez, Plaintiff Sanchez has sustained and continues to
11 sustain substantial losses of earnings and other employment benefits.

12 133. As a proximate result of DEFENDANT's willful, knowing, and intentional
13 discrimination against Plaintiff Sanchez, Plaintiff Sanchez has suffered and continues to
14 suffer humiliation, emotional distress, and physical and mental pain and anguish, all to his
15 damage in a sum according to proof.

16 134. Plaintiff Sanchez has incurred and continues to incur legal expenses and
17 attorneys' fees. Pursuant to Government Code Section 12965(b), Plaintiff Sanchez is
18 entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount
19 according to proof.

20 135. DEFENDANT's misconduct was committed intentionally, in a malicious,
21 oppressive manner, and fraudulent manner entitling Plaintiff Sanchez to punitive damages
22 against DEFENDANT.

23
24 ///

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26 ///

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ELEVENTH CAUSE OF ACTION

For Failure to Engage in the Interactive Process

[Cal. Gov. Code § 12940(n)]

(By Plaintiff Sanchez Against All Defendants)

136. Plaintiff Sanchez realleges and incorporates by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

137. DEFENDANT was an employer who met all of the requisite requirements set forth under the California Fair Employment and Housing Act.

138. Plaintiff Sanchez suffered from a mental disability as defined under Cal. Gov. Code § 12926(j).

139. Plaintiff Sanchez suffered from a physical disability as defined under Cal. Gov. Code § 12926(m).

140. DEFENDANT was aware that Plaintiff Sanchez suffered from a physical disability, as set forth herein.

141. Furthermore, Plaintiff Sanchez came back to work after going on protected leave for her worsening Iritis condition in July of 2022. Upon returning to work in August of 2022 and continuing into September and October of 2022, Plaintiff Sanchez experienced severe symptoms including redness, pain, light sensitivity, blurred vision. Plaintiff Sanchez consulted and requested numerous times for an accommodation with DEFENDANT to allow her to remain in the office instead of going out in the field. Plaintiff Sanchez's managers failed to accommodate her requests and brushed off Plaintiff Sanchez's complaints. Plaintiff Sanchez suffered mental and physical issues as a result of the stress caused by DEFENDANT's failure to accommodate her requests. During this time, Plaintiff Sanchez was plagued with ongoing work pressures, obligations, and mistreatment by her supervisors, including but not limited to, falsifying performance reviews and making false accusations about Plaintiff Sanchez's performance. Furthermore, the continuous stress from work caused Plaintiff Sanchez to feel afraid of going into work. Shortly after returning from leave for her eye condition, and after twenty years of employment with DEFENDANT, DEFENDANT terminated Plaintiff Sanchez's

1 employment on October 28, 2022. DEFENDANT claimed Plaintiff Sanchez's termination was
2 based on poor performance, but in reality DEFENDANT's decision and real motivation to
3 terminate Plaintiff Sanchez was in retaliation for Plaintiff Sanchez continuing to request
4 accommodation for disability related situation.

5 142. Moreover, DEFENDANT discriminated against and failed to reasonably
6 accommodate Plaintiff Sanchez for her physical disabilities. Plaintiff Sanchez herein alleges
7 that the actions taken by employees of DEFENDANT against Plaintiff Sanchez occurred within
8 the normal scope and course of these individuals' employment with DEFENDANT. Plaintiff
9 Sanchez further alleges that these employees were Plaintiff Sanchez's supervisors while
10 Plaintiff Sanchez was employed by DEFENDANT. However, Plaintiff Sanchez's request for
11 accommodation fell on deaf ears, as DEFENDANT failed to respond to Plaintiff Sanchez's
12 requests. Ultimately, DEFENDANT never took Plaintiff Sanchez seriously and subsequently
13 terminated her employment on October 28, 2022.

14 143. Moreover, Plaintiff Sanchez was more than willing to participate in an interactive
15 process to determine whether reasonable accommodations could be made without
16 DEFENDANT suffering any business or financial hardships.

17 144. DEFENDANT failed to participate in a timely and/or good faith interactive
18 process after Plaintiff Sanchez requested reasonable accommodations. In fact, DEFENDANT
19 failed to respond to any of Plaintiff Sanchez's communications regarding her request for
20 accommodations.

21 145. As a result of DEFENDANT refusing to participate in a good faith interactive
22 process, Plaintiff Sanchez was harmed in the form of emotional and physical pain and suffering.

23 146. DEFENDANT's failure to engage in a good faith interactive process was a
24 substantial factor in causing Plaintiff Sanchez's harm.

25 147. The actions alleged herein were taken by managing agents and/or officers of
26 DEFENDANT and/or ratified by managing agents and/or officers of DEFENDANT. In so
27 doing, said managing agents and/or officers of DEFENDANT acted with malice and oppression
28

1 as those terms are used in California Code of Civil Procedure § 3294. As such, Plaintiff Sanchez
2 is entitled to an award of punitive damages.

3 148. Plaintiff Sanchez is also entitled to recover reasonable attorney's fees and costs
4 pursuant to Cal. Gov. Code § 12965(b).

5
6 **TWELFTH CAUSE OF ACTION**

7 **For Failure to Provide Reasonable Accommodation**

8 **[Cal. Gov. Code § 12940(m)]**

9 **(By PLAINTIFFS and Against All Defendants)**

10 149. Plaintiff Sanchez realleges and incorporates by reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

12 150. DEFENDANT was an employer who met all of the requirements set forth under
13 the California Fair Employment and Housing Act.

14 151. Plaintiff Sanchez suffered from a mental disability as defined under Cal. Gov.
15 Code § 12926(j).

16 152. Plaintiff Sanchez suffered from a physical disability as defined under Cal. Gov.
17 Code § 12926(m).

18 153. DEFENDANT was aware that Plaintiff Sanchez suffered from a physical
19 disability as set forth herein.

20 154. Furthermore, Plaintiff Sanchez came back to work after going on protected leave
21 for her worsening Iritis condition in July of 2022. Upon returning to work in August of 2022
22 and continuing into September and October of 2022, Plaintiff Sanchez experienced severe
23 symptoms including redness, pain, light sensitivity, blurred vision. Plaintiff Sanchez consulted
24 and requested numerous times for an accommodation with DEFENDANT to allow her to
25 remain in the office instead of going out in the field. Plaintiff Sanchez's managers failed to
26 accommodate her requests and brushed off Plaintiff Sanchez's complaints. Plaintiff Sanchez
27 suffered mental and physical issues as a result of the stress caused by DEFENDANT's failure
28 to accommodate her requests. During this time, Plaintiff Sanchez was plagued with ongoing

1 work pressures, obligations, and mistreatment by her supervisors, including but not limited to,
2 falsifying performance reviews and making false accusations about Plaintiff Sanchez's
3 performance. Furthermore, the continuous stress from work caused Plaintiff Sanchez to feel
4 afraid of going into work. Shortly after returning from leave for her eye condition, and after
5 twenty years of employment with DEFENDANT, DEFENDANT terminated Plaintiff Sanchez's
6 employment on October 28, 2022. DEFENDANT claimed Plaintiff Sanchez's termination was
7 based on poor performance, but in reality DEFENDANT's decision and real motivation to
8 terminate Plaintiff Sanchez was in retaliation for Plaintiff Sanchez continuing to request
9 accommodation for disability related situation.

10 155. Moreover, DEFENDANT discriminated against and failed to reasonably
11 accommodate Plaintiff Sanchez for her physical disabilities. Plaintiff Sanchez herein alleges
12 that the actions taken by employees of DEFENDANT against Plaintiff Sanchez occurred within
13 the normal scope and course of these individuals' employment with DEFENDANT. Plaintiff
14 Sanchez further alleges that these employees were Plaintiff Sanchez's supervisors while
15 Plaintiff Sanchez was employed by DEFENDANT. However, Plaintiff Sanchez's request for
16 accommodation fell on deaf ears, as DEFENDANT failed to respond to Plaintiff Sanchez's
17 requests. Ultimately, DEFENDANT never took Plaintiff Sanchez seriously and subsequently
18 terminated her employment on October 28, 2022.

19 156. DEFENDANT failed to provide Plaintiff Sanchez with reasonable
20 accommodation for her mental and physical disabilities.

21 157. As a direct and proximate result of DEFENDANT refusing to provide Plaintiff
22 Sanchez with reasonable accommodation, Plaintiff Sanchez was met with a series of adverse
23 employment actions as set forth herein. As a further direct result of DEFENDANT's failure to
24 provide Plaintiff Sanchez with a reasonable accommodation, Plaintiff Sanchez was harmed in
25 the form of emotional and physical pain and suffering.

26 158. DEFENDANT's failure to provide reasonable accommodation was a substantial
27 factor in causing Plaintiff Sanchez's harm.
28

1 159. The actions alleged herein were taken by managing agents and/or officers of
2 DEFENDANT and/or ratified by managing agents and/or officers of DEFENDANT. In so
3 doing, said managing agents and/or officers of DEFENDANT acted with malice and oppression
4 as those terms are used in California Code of Civil Procedure § 3294. As such, Plaintiff Sanchez
5 is entitled to an award of punitive damages.

6 160. Plaintiff Sanchez is also entitled to recover reasonable attorney's fees and costs
7 pursuant to Cal. Gov. Code § 12965(b).

8
9 **THIRTEENTH CAUSE OF ACTION**
10 **Wrongful Termination In Violation of Public Policy**
11 **(By PLAINTIFFS Against All Defendants)**

12 161. Plaintiff Sanchez realleges and incorporates by reference, as though fully set
13 forth herein, the prior paragraphs of this Complaint.

14 162. Furthermore, Plaintiff Sanchez came back to work after going on protected
15 leave for her worsening Iritis condition in July of 2022. Upon returning to work in August of
16 2022 and continuing into September and October of 2022, Plaintiff Sanchez experienced
17 severe symptoms including redness, pain, light sensitivity, blurred vision. Plaintiff Sanchez
18 consulted and requested numerous times for an accommodation with DEFENDANT to
19 allow her to remain in the office instead of going out in the field. Plaintiff Sanchez's
20 managers failed to accommodate her requests and brushed off Plaintiff Sanchez's
21 complaints. Plaintiff Sanchez suffered mental and physical issues as a result of the stress
22 caused by DEFENDANT's failure to accommodate her requests. During this time, Plaintiff
23 Sanchez was plagued with ongoing work pressures, obligations, and mistreatment by her
24 supervisors, including but not limited to, falsifying performance reviews and making false
25 accusations about Plaintiff Sanchez's performance. Furthermore, the continuous stress from
26 work caused Plaintiff Sanchez to feel afraid of going into work. Shortly after returning from
27 leave for her eye condition, and after twenty years of employment with DEFENDANT,
28 DEFENDANT terminated Plaintiff Sanchez's employment on October 28, 2022.

1 DEFENDANT claimed Plaintiff Sanchez's termination was based on poor performance, but
2 in reality DEFENDANT's decision and real motivation to terminate Plaintiff Sanchez was in
3 retaliation for Plaintiff Sanchez continuing to request accommodation for disability related
4 situation.

5 163. Moreover, DEFENDANT discriminated against and failed to reasonably
6 accommodate Plaintiff Sanchez for her physical disabilities. Plaintiff Sanchez herein alleges
7 that the actions taken by employees of DEFENDANT against Plaintiff Sanchez occurred
8 within the normal scope and course of these individuals' employment with DEFENDANT.
9 Plaintiff Sanchez further alleges that these employees were Plaintiff Sanchez's supervisors
10 while Plaintiff Sanchez was employed by DEFENDANT. However, Plaintiff Sanchez's
11 request for accommodation fell on deaf ears, as DEFENDANT failed to respond to Plaintiff
12 Sanchez's requests. Ultimately, DEFENDANT never took Plaintiff Sanchez seriously and
13 subsequently terminated her employment on October 28, 2022.

14 164. Plaintiff Sanchez raised complaints of illegality while Plaintiff Sanchez
15 worked for DEFENDANT and was believed to be willing to raise complaints, and
16 DEFENDANT retaliated against Plaintiff Sanchez by taking adverse employment actions,
17 including employment termination, against Plaintiff Sanchez.

18 165. As a proximate result of DEFENDANT'S willful, knowing, and intentional
19 conduct, Plaintiff Sanchez has suffered and continues to suffer humiliation, emotional
20 distress, and mental and physical pain and anguish, all to PLAINTIFFS's damage in a sum
21 according to proof.

22 166. As a result of DEFENDANT'S adverse employment actions against Plaintiff
23 Sanchez, Plaintiff Sanchez has suffered general and special damages in sums according to
24 proof.
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167. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling Plaintiff Sanchez to punitive damages against DEFENDANT.

FOURTEENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFFS and Against All Defendants)

168. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

170. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES")

1 during the time period of January 9, 2022 until a date as determined by the Court (the
2 "PAGA PERIOD").

3 171. On January 9, 2023, Plaintiff Sanchez gave written notice by electronic mail
4 to the Labor and Workforce Development Agency (the "Agency") and by certified mail to
5 the employer of the specific provisions of this code alleged to have been violated as required
6 by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
7 herein (PAGA Notice only without draft complaint). The statutory waiting period for
8 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
9 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
10 pursuant to Section 2699 as the proxy of the State of California with respect to all
11 AGGRIEVED EMPLOYEES as herein defined.

12 172. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
14 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
15 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
16 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
17 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
18 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
19 202, 203, 204 et seq., 210, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2),
20 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
21 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure
22 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
23 penalties as a result of such conduct. PLAINTIFFS hereby seek recovery of only civil
24 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
25 representative of the State of California for the illegal conduct perpetrated on PLAINTIFFS
26 and the AGGRIEVED EMPLOYEES.
27
28

1 **PRAYER FOR RELIEF**

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

4
5 1. On behalf of the CALIFORNIA CLASS:

- 6 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
7 CLASS as 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
11 withheld from compensation due to PLAINTIFFS and the other members of the
12 CALIFORNIA CLASS; and,
- 13 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
14 for restitution of the sums incidental to DEFENDANT's violations due to
15 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- 18 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
19 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
20 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 21 B) Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum and overtime compensation due PLAINTIFFS and the
23 other members of the CALIFORNIA LABOR SUB-CLASS, during the
24 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
25 at the statutory rate;
- 26
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- 1 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
2 in which a violation occurs and one hundred dollars (\$100) per each member of
3 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
5 an award of costs for violation of Cal. Lab. Code § 226;
6
7 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
8 the applicable IWC Wage Order;
9
10 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
11 1197;
12
13 F) The amount of the expenses PLAINTIFFS and each member of the
14 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
15 plus interest, and costs of suit.; and,
16
17 G) The wages of all terminated employees in the CALIFORNIA LABOR
18 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
19 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
20
21 3. On behalf of PLAINTIFF Sanchez for the Tenth, Eleventh, Twelfth and Thirteenth
22 causes of action:
23
24 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.
25
26 B) Special and General damages according to proof;
27
28 C) Statutory damages, penalties and attorney's fees;
29
30 D) For punitive damages in an amount necessary to make an example of and to
31 punish DEFENDANT and deter DEFENDANT from engaging in future similar
32 conduct;
33
34 E) For loss of earnings (both past and future); and,

- 1 F) For interest at the legal rate in an amount according to proof.
- 2 4. On behalf of the State of California and with respect to all AGGRIEVED
- 3 EMPLOYEES:
- 4
- 5 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
- 6 General Act of 2004.
- 7 5. On all claims:
- 8
- 9 A) An award of interest, including prejudgment interest at the legal rate;
- 10 B) Such other and further relief as the Court deems just and equitable; and,
- 11 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 12 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
- 13 and/or §2802.
- 14

15

16 Dated: November 7, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

17

18 By: /s/ Nicholas J. De Blouw

19 Nicholas J. De Blouw

20 Attorneys for PLAINTIFFS

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DEMAND FOR A JURY TRIAL

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

Dated: November 7, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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