

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago
Phone: (858) 551-1223
Fax: (858) 551-1232

WRITERS E-MAIL:
SergioJulian@bamlawca.com

WRITERS EXT:
1001

May 9, 2024
CA2909

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Select CS Physical Therapy, P.C.
Certified Mail #9589071052700298442862
TUCKER ELLIS LLP
515 South Flower Street, Forty Second Floor
Los Angeles, CA 90071
Ndubisi A. Ezeolu
Maia Mdinardze
Anna-Sophie Tirre

Physiotherapy Associates, Inc.
Certified Mail #9589071052700298442862
TUCKER ELLIS LLP
515 South Flower Street, Forty Second Floor
Los Angeles, CA 90071
Ndubisi A. Ezeolu
Maia Mdinardze
Anna-Sophie Tirre

Second Amended Notice for LWDA Case No.: LWDA-CM-937435-23

Re: Second Amended Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our office represents Plaintiff Jade Yim, Adriana Barrera and other Aggrieved Employees in their lawsuit against Select CS Physical Therapy, P.C and/or Physiotherapy Associates, Inc.

Plaintiff Yim originally sent a PAGA Notice on February 21, 2023, which gave notice to the LWDA, and Select CS Physical Therapy, P.C., to enable Plaintiff Yim to proceed with the Complaint against Select CS Physical Therapy, P.C., as authorized by California Labor Code section 2699, *et seq.*

On January 15, 2024, Plaintiff Yim provided Amended Notice to amend Jade Yim's original PAGA Notice and to add an additional Defendant, Physiotherapy Associates, Inc. Defendants Select CS Physical Therapy, P.C. and Physiotherapy Associates, Inc., shall collectively be referred to herein as "Defendants".

This Second Amended Notice is intended to amend the Notice to add an additional Plaintiff, Adriana Barrera. Plaintiffs Jade Yim and Adriana Barrera shall collectively be referred to herein as “Plaintiffs”. This Second Amended Notice is also intended to expand the definition of Aggrieved Employees to include all individuals who are or previously were employed by Select CS Physical Therapy, P.C. and/or Physiotherapy Associates, Inc. in California as Clinicians and were classified as exempt.

“Aggrieved Employees” refers to 1) all individuals who are or previously were employed by Select CS Physical Therapy, P.C. and Physiotherapy Associates, Inc., in California, including any employees staffed with Select CS Physical Therapy, P.C., and 2) all persons who are or previously were employed by Select CS Physical Therapy, P.C. and/or Physiotherapy Associates, Inc. in California as Clinicians and were classified as exempt during the time period of February 21, 2022 until a date as determined by the Court. Our offices represent Plaintiff Jade Yim and Adriana Barrera (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against Select CS Physical Therapy, P.C. and Physiotherapy Associates, Inc., (“Defendants”). Plaintiff Yim was employed by Defendants in California from April of 2021 to February of 2023. Plaintiff was at all times misclassified by Defendants, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Plaintiff Barrera was employed by Defendants in California from 2007 through December 30, 2023, and was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendants required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendants violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendants required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendants failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendants failed to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendants failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendants failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiffs and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendants provided to Plaintiffs and the Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiffs contend that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendants failed to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendants, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendants as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Sergio J. Puche

Sergio Julian Puche, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6
7 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 JADE YIM and ADRIANA BARRERA,
11 individuals, on behalf of themselves and on
12 behalf of all persons similarly situated,

13 **PLAINTIFFS,**

14 vs.

15 SELECT CS PHYSICAL THERAPY, P.C., a
16 California Professional Corporation;
17 PHYSIOTHERAPY ASSOCIATES, INC., a
Corporation; and DOES 1 through 50, inclusive,

18 **Defendants.**

Case No. 23STCV12286

**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; and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB CODE §§201-204, 233, 246

DEMAND FOR A JURY TRIAL

1 Plaintiff Jade Yim and Adriana Barrera (“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 **THE PARTIES**

6 1. Select CS Physical Therapy, P.C. is a California professional corporation that at
7 all relevant times mentioned herein conducted and continues to conduct substantial business in
8 the state of California.

9 2. Physiotherapy Associates, Inc. is a corporation that at all relevant times mentioned
10 herein conducted and continues to conduct substantial business in the state of California.

11 3. Select CS Physical Therapy, P.C. and/or Physiotherapy Associates, Inc. were the
12 joint employers of PLAINTIFFS as evidenced by paycheck and by the company PLAINTIFFS
13 performed work for respectively, and are, therefore, jointly responsible as employers for the
14 conduct alleged herein, and are therefore collectively referred to herein as (“DEFENDANT”).

15 4. DEFENDANT provides physical therapy services in California.

16 5. As part of their business, Select CS Physical Therapy, P.C. and/or Physiotherapy
17 Associates, Inc. employs a fleet of Clinicians. The employees employed in positions at Select
18 CS Physical Therapy, P.C. and/or Physiotherapy Associates, Inc. with the titles of
19 “Occupational Therapists” “Physical Therapists” “Sports Therapists” “Pediatric Therapists”
20 “Hand Therapists” “Pelvic Health Physical Therapists” and all perform the same primary job
21 duties of providing various forms of therapy to patients while promoting healing and recover
22 in a compassionate environment, providing and exceptional patient experience and keeping
23 patients and each other safe, and are collectively referred to herein as the “Clinicians”.

24 6. Plaintiff Jade Yim, was employed by DEFENDANT in California as a Clinician
25 (specifically an Occupational Therapist) from May of 2021 until September of 2022. At all
26 times relevant during her employment with DEFENDANT, Plaintiff Jade Yim was classified
27 by DEFENDANT as a salaried employee exempt from overtime wages and other related
28 benefits.

1 7. Plaintiff Adriana Barrera, was employed by DEFENDANT in California from
2 2007 through December 30, 2023, and was at all times classified by DEFENDANT as a non-
3 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
4 periods and payment of minimum and overtime wages due for all time worked.

5 8. PLAINTIFFS bring this Class Action on behalf of themselves and a California
6 class, defined as all individuals who are or previously were employed by Select CS Physical
7 Therapy, P.C. and/or Physiotherapy Associates, Inc. in California, including any employees
8 staffed with Select CS Physical Therapy, P.C. and/or Physiotherapy Associates, Inc. by a third
9 party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
10 during the period beginning four (4) years prior to the filing of this Complaint and ending on
11 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
12 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
13 dollars (\$5,000,000.00).

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

25 10. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
27 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
28 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint

1 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
2 ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief
3 allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive,
4 are responsible in some manner for one or more of the events and happenings that proximately
5 caused the injuries and damages hereinafter alleged.

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

14 **THE CONDUCT**

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

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

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

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

1 underpayment of overtime compensation and meal and rest break premiums to PLAINTIFFS
2 and other CALIFORNIA CLASS Members by DEFENDANT.

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

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

1 spend their time which includes control over the locations where employees may take their rest
2 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
3 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and
4 other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on
5 DEFENDANT's rule which states PLAINTIFFS and other CALIFORNIA CLASS Members
6 cannot leave the work premises during their rest period.

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

22 18. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
23 other members of the CALIFORNIA CLASS with complete and accurate wage statements
24 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
25 Code § 226 provides that every employer shall furnish each of his or her employees with an
26 accurate itemized wage statement in writing showing, among other things, gross wages earned
27 and all applicable hourly rates in effect during the pay period and the corresponding amount of
28 time worked at each hourly rate. PLAINTIFFS and CALIFORNIA CLASS Members were paid

1 on an hourly basis. As such, the wage statements should reflect all applicable hourly rates
2 during the pay period and the total hours worked, and the applicable pay period in which the
3 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
4 DEFENDANT provided to PLAINTIFFS and other CALIFORNIA CLASS Members failed to
5 identify such information. More specifically, the wage statements failed to identify the accurate
6 total hours worked each pay period. When the hours shown on the wage statements were added
7 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
8 Lab. Code 226(a)(2). DEFENDANT also violated Cal. Lab. Code 226(a)(6) by not including
9 the inclusive dates of the period for which the employee is paid. Aside, from the violations
10 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage
11 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
12 DEFENDANT from time to time provided PLAINTIFFS and the other members of the
13 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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

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

29 21. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
30 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
31 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt

1 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
2 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS
3 Members at their base rates of pay.

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

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

14 24. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and
15 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting
16 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and
17 believe and based thereon allege that such failure to pay sick pay at regular rate was willful,
18 such that PLAINTIFFS and members of the CALIFORNIA CLASS whose employment has
19 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

20 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
21 to collect or receive from an employee any part of wages theretofore paid by said employer to
22 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and other
23 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
24 payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
25 all aspects of the deductions from compensation payable to PLAINTIFFS and CALIFORNIA
26 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
27 each applicable pay period and upon termination. PLAINTIFFS and members of the
28

1 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
2 according to proof, related penalties, interest, attorney fees and costs.

3 26. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
4 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
5 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence
6 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
7 2802, employers are required to indemnify employees for all expenses incurred in the course
8 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
9 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
10 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
11 directions of the employer, even though unlawful, unless the employee, at the time of obeying
12 the directions, believed them to be unlawful."

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

23 28. In violation of the applicable sections of the California Labor Code and the
24 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
25 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
26 and systematically failed to provide PLAINTIFFS and the other Aggrieved Employees suitable
27 seating when the nature of these employees' work reasonably permitted sitting.
28

1 29. DEFENDANT knew or should have known that PLAINTIFFS and other
2 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
3 not interfere with the performance of their duties, and that DEFENDANT did not provide
4 suitable seating and/or did not allow them to sit when it did not interfere with the performance
5 of their duties.

6 30. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved
7 Employees, DEFENDANT violated California Labor Code Section 1198 and California Code
8 of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order 4-2001,
9 Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties on behalf of
10 PLAINTIFFS and other Aggrieved Employees as provided herein. Providing suitable seating
11 is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
12 obligation to meet this burden, DEFENDANT violated the California Labor Code and
13 regulations promulgated thereunder as herein alleged.

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

25 32. During the CALIFORNIA EXEMPT CLASS PERIOD, PLAINTIFFS as a
26 Clinician, has been classified by DEFENDANT as exempt from overtime pay, meal and rest
27 periods, and reimbursement of business expenses and works in excess of eight (8) hours in a
28

1 workday and/or more than forty (40) hours in a workweek, but as a result of DEFENDANT's
2 misclassification of PLAINTIFFS as exempt from the applicable California Labor Code
3 provisions, PLAINTIFFS are not compensated by DEFENDANT for their overtime worked,
4 missed meal and rest breaks, and her business expenses she incurred as a result of her job duties
5 for Defendant. DEFENDANT does not have a policy or practice which provides meal and rest
6 breaks to PLAINTIFFS and also fails to compensate PLAINTIFFS for their missed meal and
7 rest breaks. As a consequence of the foregoing, PLAINTIFFS are not provided with accurate
8 and itemized wage statements showing the gross wages earned, the net wages earned, all
9 applicable hourly rates in effect during the pay period, including overtime hourly rates, and the
10 corresponding number of hours worked at each hourly rate, by DEFENDANT during the
11 CALIFORNIA EXEMPT CLASS PERIOD in violation of Cal. Lab. Code § 226(a).

12 33. PLAINTIFFS and all members of the CALIFORNIA EXEMPT CLASS are
13 uniformly classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
14 DEFENDANT has failed to take the proper steps to determine whether PLAINTIFFS, and the
15 members of the CALIFORNIA EXEMPT CLASS, were properly classified under the applicable
16 Industrial Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510,
17 et seq. as exempt from applicable California labor laws. Since DEFENDANT affirmatively and
18 willfully misclassified PLAINTIFFS and the members of the CALIFORNIA EXEMPT CLASS
19 in compliance with California labor laws, DEFENDANT's practices violated and continue to
20 violate California law. In addition, DEFENDANT acted deceptively by falsely and fraudulently
21 telling PLAINTIFFS and each member of the CALIFORNIA EXEMPT CLASS that they are
22 exempt from meal breaks and overtime pay when DEFENDANT knew or should have known
23 that this statement is false and not based on known facts. DEFENDANT also acted unfairly by
24 violating the California labor laws, and as a result of this policy and practice, DEFENDANT
25 also violated the UCL. In doing so, DEFENDANT cheated the competition by paying the
26 CALIFORNIA EXEMPT CLASS less than the amount competitors paid who complied with
27 the law and cheated the CALIFORNIA EXEMPT CLASS by not paying them in accordance
28 with California law.

1
2
3
4
5
6
7
8
9
10
11
12
JURISDICTION AND VENUE

34. 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.

35. 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.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
THE CALIFORNIA CLASS

36. 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 Select CS Physical Therapy, P.C. and/or Physiotherapy Associates, Inc. in California, including any employees staffed with Select CS Physical Therapy, P.C. and/or Physiotherapy Associates, Inc. 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).

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

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

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

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

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

- 21 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
22 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
23 deceptively having in place company policies, practices and procedures
24 that failed to record and pay PLAINTIFFS and the other members of the
25 CALIFORNIA CLASS for all time worked, including minimum wages
26 owed and overtime wages owed for work performed by these employees;
27 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 42. This Class Action meets the statutory prerequisites for the maintenance of a Class
5 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 of
8 their claims as a class will benefit the parties and the Court;
- 9 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
10 that are raised in this Complaint are common to the CALIFORNIA
11 CLASS will apply to every member of the CALIFORNIA CLASS;
- 12 (c) The claims of the representative PLAINTIFFS are typical of the claims of
13 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
14 other members of the CALIFORNIA CLASS, was classified as a non-
15 exempt employee paid on an hourly basis who was subjected to the
16 DEFENDANT's deceptive practice and policy which failed to provide the
17 legally required meal and rest periods to the CALIFORNIA CLASS and
18 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA
19 CLASS. PLAINTIFFS sustained economic injury as a result of
20 DEFENDANT's employment practices. PLAINTIFFS and the members
21 of the CALIFORNIA CLASS were and are similarly or identically harmed
22 by the same unlawful, deceptive and unfair misconduct engaged in by
23 DEFENDANT; and,
- 24 (d) The representative PLAINTIFFS will fairly and adequately represent and
25 protect the interest of the CALIFORNIA CLASS, and has retained
26 counsel who are competent and experienced in Class Action litigation.
27 There are no material conflicts between the claims of the representative
28 PLAINTIFFS and the members of the CALIFORNIA CLASS that would

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

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

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

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

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

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

24 1) With respect to the First Cause of Action, the final relief on behalf
25 of the CALIFORNIA CLASS sought does not relate exclusively to
26 restitution because through this claim PLAINTIFFS seeks
27 declaratory relief holding that the DEFENDANT's policy and
28 practices constitute unfair competition, along with declaratory

1 relief, injunctive relief, and incidental equitable relief as may be
2 necessary to prevent and remedy the conduct declared to constitute
3 unfair competition;

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

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

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

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

23 B. Adjudications with respect to individual members of the
24 CALIFORNIA CLASS would as a practical matter be
25 dispositive of the interests of the other members not parties
26 to the adjudication or substantially impair or impede their
27 ability to protect their interests;
28

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, which
4 may adversely affect an individual's job with DEFENDANT or
5 with a subsequent employer, the Class Action is the only means to
6 assert their claims through a representative; and,

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

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

14 (a) The questions of law and fact common to the CALIFORNIA CLASS
15 predominate over any question affecting only individual CALIFORNIA
16 CLASS Members because the DEFENDANT's employment practices are
17 applied with respect to the CALIFORNIA CLASS;

18 (b) A Class Action is superior to any other available method for the fair and
19 efficient adjudication of the claims of the members of the CALIFORNIA
20 CLASS because in the context of employment litigation a substantial
21 number of individual CALIFORNIA CLASS Members will avoid
22 asserting their rights individually out of fear of retaliation or adverse
23 impact on their employment;

24 (c) The members of the CALIFORNIA CLASS are so numerous that it is
25 impractical to bring all members of the CALIFORNIA CLASS before the
26 Court;

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

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

26 ///

27 ///

28 ///

1
2 **THE CALIFORNIA LABOR SUB-CLASS**

3 46. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
4 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members of
5 the CALIFORNIA CLASS who are or previously were employed by Select CS Physical
6 Therapy, P.C. and/or Physiotherapy Associates, Inc. in California, including any employees
7 staffed with Select CS Physical Therapy, P.C. and/or Physiotherapy Associates, Inc. by a third
8 party, and classified as non-exempt employees(the “CALIFORNIA LABOR SUB-CLASS”)
9 at any time during the period three (3) years prior to the filing of the complaint and ending on
10 the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”)
11 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim
12 of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
13 (\$5,000,000.00).

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

26 48. DEFENDANT maintains records from which the Court can ascertain and
27 identify by name and job title, each of DEFENDANT’s employees who have been intentionally
28 subjected to DEFENDANT’s company policy, practices and procedures as herein alleged.

1 PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of
2 similarly situated employees when they have been identified.

3 49. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
4 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

20 51. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
21 under California law by:

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

LABOR SUB-CLASS the correct minimum wage pay for which
DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

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

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

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

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

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

(a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
Members is impracticable and the disposition of their claims as a class
will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
that are raised in this Complaint are common to the CALIFORNIA

1 LABOR SUB-CLASS and will apply to every member of the
2 CALIFORNIA LABOR SUB-CLASS;

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

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

22 53. In addition to meeting the statutory prerequisites to a Class Action, this action is
23 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 of
26 separate actions by individual members of the CALIFORNIA LABOR
27 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 CALIFORNIA

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

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

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

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

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

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

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

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

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

10
11 **THE CALIFORNIA EXEMPT CLASS**

12 55. PLAINTIFFS bring this Class Action on behalf of themselves and a California
13 class, defined as all persons who are or previously were employed by Select CS Physical
14 Therapy, P.C. and/or Physiotherapy Associates, Inc. in California as Clinicians and were
15 classified as exempt (the "CALIFORNIA EXEMPT CLASS") at any time during the period
16 beginning on the date beginning on four (4) years prior to the filing of the original Complaint
17 in this matter and ending on the date as determined by the Court (the "CALIFORNIA EXEMPT
18 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
19 EXEMPT CLASS MEMBERS is under five million dollars (\$5,000,000.00).

20 56. To the extent equitable tolling operates to toll claims by the CALIFORNIA
21 EXEMPT CLASS against DEFENDANT, the CALIFORNIA EXEMPT CLASS PERIOD
22 should be adjusted accordingly.

23 57. DEFENDANT, as a matter of company policy, practice and procedure, and in
24 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
27 missed by PLAINTIFFS and other CALIFORNIA EXEMPT CLASS Members, even though
28

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

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

13 59. The CALIFORNIA EXEMPT CLASS, is so numerous that joinder of all
14 CALIFORNIA EXEMPT CLASS MEMBERS is impracticable.

15 60. DEFENDANT violated the rights of the CALIFORNIA EXEMPT CLASS under
16 California law by:

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

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

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

Counsel for the CALIFORNIA EXEMPT CLASS will vigorously assert the claims of all CALIFORNIA EXEMPT CLASS MEMBERS.

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

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

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA EXEMPT CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA EXEMPT CLASS; and/or,
- 2) Adjudication with respect to individual members of the CALIFORNIA EXEMPT 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 EXEMPT CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA EXEMPT CLASS, making appropriate class-wide relief with respect to the CALIFORNIA EXEMPT CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA EXEMPT CLASS as required by law;

- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA EXEMPT CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory

1 relief, injunctive relief, and incidental equitable relief as may be
2 necessary to prevent and remedy the conduct declared to constitute
3 unfair competition;

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

11 1) The interests of the members of the CALIFORNIA EXEMPT
12 CLASS in individually controlling the prosecution or defense of
13 separate actions in that the substantial expense of individual
14 actions will be avoided to recover the relatively small amount of
15 economic losses sustained by the individual CALIFORNIA
16 EXEMPT CLASS MEMBERS when compared to the substantial
17 expense and burden 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 EXEMPT
22 CLASS, which would establish incompatible standards of
23 conduct for the DEFENDANT; and/or,

24 B. Adjudications with respect to individual members of the
25 CALIFORNIA EXEMPT CLASS would as a practical
26 matter be dispositive of the interests of the other members
27 not 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 EXEMPT CLASS MEMBERS will
3 avoid asserting their legal rights out of fear of retaliation by
4 DEFENDANT, which may adversely affect an individual's job
5 with DEFENDANT or with a subsequent employer, the Class
6 Action is the only means to assert their claims through a
7 representative; and,

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

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

15 (a) The questions of law and fact common to the CALIFORNIA EXEMPT
16 CLASS predominate over any question affecting only individual
17 CALIFORNIA EXEMPT CLASS MEMBERS because the
18 DEFENDANT's employment practices are applied with respect to the
19 CALIFORNIA EXEMPT CLASS;

20 (b) A Class Action is superior to any other available method for the fair and
21 efficient adjudication of the claims of the members of the CALIFORNIA
22 EXEMPT CLASS because in the context of employment litigation a
23 substantial number of individual CALIFORNIA EXEMPT CLASS
24 MEMBERS will avoid asserting their rights individually out of fear of
25 retaliation or adverse impact on their employment;

26 (c) The members of the CALIFORNIA EXEMPT CLASS are so numerous
27 that it is impractical to bring all members of the CALIFORNIA EXEMPT
28 CLASS before the Court;

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

22 64 DEFENDANT maintains records from which the Court can ascertain and identify
23 by job title each of DEFENDANT's employees who have been intentionally subjected to
24 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS
25 will seek leave to amend the Complaint to include any additional job titles of similarly situated
26 employees when they have been identified.

27 ///

28 ///

1
2 **THE CALIFORNIA EXEMPT SUB-CLASS**

3 65. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
4 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all persons who
5 are or previously were employed by Select CS Physical Therapy, P.C. and/or Physiotherapy
6 Associates, Inc. in California as Clinicians, and were classified as exempt (the "CALIFORNIA
7 EXEMPT CLASS") at any time during the period beginning on the date beginning on four (4)
8 years prior to the filing of the original Complaint in this matter and ending on the date as
9 determined by the Court (the "CALIFORNIA EXEMPT CLASS PERIOD"). The amount in
10 controversy for the aggregate claim of CALIFORNIA EXEMPT CLASS MEMBERS is under
11 five million dollars (\$5,000,000.00).

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

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

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

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

- 5 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
6 compensation due to members of the CALIFORNIA EXEMPT SUB-
7 CLASS for missed meal and rest breaks in violation of the California
8 Labor Code and California regulations and the applicable California Wage
9 Order;
- 10 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
11 members of the CALIFORNIA EXEMPT SUB-CLASS with accurate
12 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 the
16 CALIFORNIA EXEMPT SUB-CLASS; and,
- 17 (e) Whether DEFENDANT's conduct was willful.

18 70. DEFENDANT violated the rights of the CALIFORNIA EXEMPT SUB-CLASS
19 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 EXEMPT 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 EXEMPT SUB-CLASS the correct minimum wage pay for which
27 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

- 1 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
2 the members of the CALIFORNIA EXEMPT SUB-CLASS with an
3 accurate itemized statement in writing showing the corresponding correct
4 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 EXEMPT
7 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
8 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 employer
11 must pay the employee all wages due without abatement, by failing to
12 tender full payment and/or restitution of wages owed or in the manner
13 required by California law to the members of the CALIFORNIA
14 EXEMPT SUB-CLASS who have terminated their employment; and,
- 15 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
16 and the CALIFORNIA EXEMPT SUB-CLASS members with necessary
17 expenses incurred in the discharge of their job duties.

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

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

- 1 (c) The claims of the representative PLAINTIFFS are typical of the claims of
2 each member of the CALIFORNIA EXEMPT SUB-CLASS.
3 PLAINTIFFS, like all the other members of the CALIFORNIA EXEMPT
4 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
5 was subjected to the DEFENDANT's practice and policy which failed to
6 pay the correct amount of wages due to the CALIFORNIA EXEMPT
7 SUB-CLASS. PLAINTIFFS sustained economic injury as a result of
8 DEFENDANT's employment practices. PLAINTIFFS and the members
9 of the CALIFORNIA EXEMPT SUB-CLASS were and are similarly or
10 identically harmed by the same unlawful, deceptive, and unfair
11 misconduct engaged in by DEFENDANT; and,
- 12 (d) The representative PLAINTIFFS will fairly and adequately represent and
13 protect the interest of the CALIFORNIA EXEMPT SUB-CLASS, and has
14 retained counsel who are competent and experienced in Class Action
15 litigation. There are no material conflicts between the claims of the
16 representative PLAINTIFFS and the members of the CALIFORNIA
17 EXEMPT SUB-CLASS that would make class certification inappropriate.
18 Counsel for the CALIFORNIA EXEMPT SUB-CLASS will vigorously
19 assert the claims of all CALIFORNIA EXEMPT SUB-CLASS Members.

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

- 22 (a) Without class certification and determination of declaratory, injunctive,
23 statutory and other legal questions within the class format, prosecution of
24 separate actions by individual members of the CALIFORNIA EXEMPT
25 SUB-CLASS will create the risk of:
- 26 1) Inconsistent or varying adjudications with respect to individual
27 members of the CALIFORNIA EXEMPT SUB-CLASS which
28

would establish incompatible standards of conduct for the parties opposing the CALIFORNIA EXEMPT SUB-CLASS; or,

2) Adjudication with respect to individual members of the CALIFORNIA EXEMPT 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 EXEMPT SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA EXEMPT SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA EXEMPT 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 EXEMPT SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA EXEMPT SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA EXEMPT 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 EXEMPT 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 CALIFORNIA EXEMPT SUB-CLASS Members when compared to the

substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

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

11
12 **FIRST CAUSE OF ACTION**

13 **For Unlawful Business Practices**

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

15 **(By PLAINTIFFS, the CALIFORNIA CLASS, The CALIFORNIA EXEMPT CLASS**
16 **and Against All Defendants)**

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

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

22 76. 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 may be

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

3 Cal. Bus. & Prof. Code § 17203.

4 77. 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, 1198,
8 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
9 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
10 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
11 unfair competition, including restitution of wages wrongfully withheld.

12 78. 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 wrongfully
17 withheld.

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

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

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

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

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

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

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

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

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

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

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

24 ///

25 ///

26 ///

27 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18

7
8
9
10
11
12
13
14
15
16
17
18

9
10
11
12
13
14
15
16
17
18

22
23
24
25
26
27
28

24
25
26
27
28

1 deny timely payment of wages due to PLAINTIFFS, the other members of the CALIFORNIA
2 LABOR SUB-CLASS and the other members of the CALIFORNIA EXEMPT SUB-CLASS.

3 95. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
4 applicable to the CALIFORNIA LABOR SUB-CLASS and CALIFORNIA EXEMPT SUB-
5 CLASS as a whole, as a result of implementing a policy and practice that denies accurate
6 compensation to PLAINTIFFS, the other members of the CALIFORNIA LABOR SUB-
7 CLASS, and the other members of the CALIFORNIA EXEMPT SUB-CLASS in regards to
8 minimum wage pay.

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

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

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

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

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

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

25 102. PLAINTIFFS, the other members of the CALIFORNIA LABOR SUB-CLASS
26 and the other members of the CALIFORNIA EXEMPT SUB-CLASS therefore request
27 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
28 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the

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

11
12 **THIRD CAUSE OF ACTION**

13 **For Failure To Pay Overtime Compensation**

14 **[Cal. Lab. Code § 510]**

15 **(By PLAINTIFFS, THE CALIFORNIA LABOR SUB-CLASS and THE**
16 **CALIFORNIA EXEMPT SUB-CLASS and Against All Defendants)**

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

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

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

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

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

9 108. During the CALIFORNIA LABOR SUB-CLASS PERIOD, and CALIFORNIA
10 EXEMPT SUB-CLASS PERIOD, PLAINTIFFS, the other members of the CALIFORNIA
11 LABOR SUB-CLASS and the other members of the CALIFORNIA EXEMPT SUB-CLASS
12 were required, permitted or suffered by DEFENDANT to work for DEFENDANT and were not
13 paid for all the time they worked, including overtime work.

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

23 110. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
25 PLAINTIFFS, the other members of the CALIFORNIA LABOR SUB-CLASS and the other
26 members of the CALIFORNIA EXEMPT SUB-CLASS. DEFENDANT acted in an illegal
27 attempt to avoid the payment of all earned wages, and other benefits in violation of the
28 California Labor Code, the Industrial Welfare Commission requirements and other applicable

1 laws and regulations. As a direct result of DEFENDANT's unlawful wage practices as alleged
2 herein, the PLAINTIFFS, the other members of the CALIFORNIA LABOR SUB-CLASS and
3 the other members of the CALIFORNIA EXEMPT SUB-CLASS did not receive full
4 compensation for overtime worked.

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

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

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

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

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

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

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

24 117. PLAINTIFFS, the other members of the CALIFORNIA LABOR SUB-CLASS
25 and the other members of the CALIFORNIA EXEMPT SUB-CLASS therefore request
26 recovery of all overtime wages, according to proof, interest, statutory costs, as well as the
27 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
28 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime

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

10
11 **FOURTH CAUSE OF ACTION**

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

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

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

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

19 119. During the CALIFORNIA CLASS PERIOD and CALIFORNIA EXEMPT SUB-
20 CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required
21 off-duty meal breaks to PLAINTIFFS, the other members of the CALIFORNIA LABOR SUB-
22 CLASS, and the other members of the CALIFORNIA EXEMPT SUB-CLASS as required by
23 the applicable Wage Order and Labor Code. The nature of the work performed by
24 PLAINTIFFS, the other members of the CALIFORNIA LABOR SUB-CLASS, and the other
25 members of the CALIFORNIA EXEMPT SUB-CLASS did not prevent these employees from
26 being relieved of all of their duties for the legally required off-duty meal periods. As a result
27 of their rigorous work schedules, PLAINTIFFS, the other members of the CALIFORNIA
28 LABOR SUB-CLASS, and the other members of the CALIFORNIA EXEMPT SUB-CLASS

1 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
2 Additionally, DEFENDANT's failure to provide PLAINTIFFS, the CALIFORNIA LABOR
3 SUB-CLASS Members, and the CALIFORNIA EXEMPT SUB-CLASS Members with legally
4 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
5 business records from time to time. Further, DEFENDANT failed to provide PLAINTIFFS,
6 the CALIFORNIA LABOR SUB-CLASS Members, and the CALIFORNIA EXEMPT SUB-
7 CLASS Members with a second off-duty meal period in some workdays in which these
8 employees were required by DEFENDANT to work ten (10) hours of work from time to time.
9 As a result PLAINTIFFS, the CALIFORNIA LABOR SUB-CLASS Members, and the
10 CALIFORNIA EXEMPT SUB-CLASS Members therefore forfeited meal breaks without
11 additional compensation and in accordance with DEFENDANT's strict corporate policy and
12 practice.

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

27 125. As a proximate result of the aforementioned violations, PLAINTIFFS, the other
28 CALIFORNIA LABOR SUB-CLASS Members and the CALIFORNIA EXEMPT SUB-

1 CLASS Members have been damaged in an amount according to proof at trial, and seek all
2 wages earned and due, interest, penalties, expenses and costs of suit.

3 **SIXTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 226]**

6 **(By PLAINTIFFS, the CALIFORNIA LABOR SUB-CLASS and the CALIFORNIA**
7 **EXEMPT SUB-CLASS Against All Defendants)**

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

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

- 14 (1) gross wages earned,
15 (2) total hours worked by the employee, except for any employee whose compensation
16 is solely based on a salary and who is exempt from payment of overtime under
17 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
18 Commission,
19 (3) the number of piecerate units earned and any applicable piece rate if the employee
20 is paid on a piece-rate basis,
21 (4) all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item,
23 (5) net wages earned,
24 (6) the inclusive dates of the period for which the employee is paid,
25 (7) the name of the employee and his or her social security number, except that by
26 January 1, 2008, only the last four digits of his or her social security number or an
27 employee identification number other than a social security number may be shown on
28 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.

128. From time to time, DEFENDANT also failed to provide PLAINTIFFS, the other
members of the CALIFORNIA LABOR SUB-CLASS and the other members of the
CALIFORNIA EXEMPT SUB-CLASS with complete and accurate wage statements which
failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
226 provides that every employer shall furnish each of his or her employees with an accurate

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

20 129. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
21 § 226, causing injury and damages to PLAINTIFFS, the other CALIFORNIA LABOR SUB-
22 CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members . These damages
23 include, but are not limited to, costs expended calculating the correct wages for all missed meal
24 and rest breaks and the amount of employment taxes which were not properly paid to state and
25 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS, the
26 other CALIFORNIA LABOR SUB-CLASS Members and the CALIFORNIA EXEMPT SUB-
27 CLASS Members may elect to recover liquidated damages of fifty dollars (\$50.00) for the
28 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each

1 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
2 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
3 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS and
4 the CALIFORNIA EXEMPT SUB-CLASS herein).

5
6 **SEVENTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

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

18 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee 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.

138. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS and CALIFORNIA EXEMPT SUB-CLASS Members' employment contract.

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

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

140. The employment of PLAINTIFFS, the other CALIFORNIA LABOR SUB-CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law. Additionally, at all times during the term of PLAINTIFF's employment with DEFENDANT, PLAINTIFFS, the other CALIFORNIA LABOR SUB-CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members earned and accrued vested vacation and holiday time on the date of their termination pursuant to DEFENDANT's uniform vacation policies and applicable California

1 law. The amount of vacation pay PLAINTIFFS, the other CALIFORNIA LABOR SUB-CLASS
2 Members and the CALIFORNIA EXEMPT SUB-CLASS Members earned and accumulated
3 is evidenced by DEFENDANT's business records. Additionally, DEFENDANT also underpaid
4 accrued vested vacation wages to PLAINTIFFS, the other CALIFORNIA LABOR SUB-
5 CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members by failing to pay
6 such wages at the regular rate of pay and more specifically the final rate of pay that included
7 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
8 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFFS, the other CALIFORNIA
9 LABOR SUB-CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members at
10 their base rates of pay, instead of including all of PLAINTIFFS, the other CALIFORNIA
11 LABOR SUB-CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members'
12 non-discretionary incentive compensation into the vacation wage payment calculations.
13 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
14 PLAINTIFFS, the other CALIFORNIA LABOR SUB-CLASS Members and the
15 CALIFORNIA EXEMPT SUB-CLASS Members would be paid vacation upon leaving
16 employment with DEFENDANT. As a result of DEFENDANT's unlawful practice, policy and
17 procedure to deny paying the PLAINTIFFS, the other members of the CALIFORNIA LABOR
18 SUB-CLASS and the other members of the CALIFORNIA EXEMPT SUB-CLASS, all of their
19 vested vacation and holiday time, DEFENDANT failed to pay the PLAINTIFFS, the members
20 of the CALIFORNIA LABOR SUB-CLASS, and the members of the CALIFORNIA EXEMPT
21 SUB-CLASS all vested vacation time as wages due upon employment termination, in violation
22 of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly, DEFENDANT
23 underpaid waiting time penalties to PLAINTIFFS, the other CALIFORNIA LABOR SUB-
24 CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members at their base rates
25 of pay, instead of including all of PLAINTIFFS', the other CALIFORNIA LABOR SUB-
26 CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members' non-discretionary
27 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
28 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide

1 compensation for earned, accrued and vested vacation and holiday time, as well as the
2 corresponding waiting time penalties that were paid. DEFENDANT perpetrated this unlawful,
3 unfair and deceptive practice to the detriment of the PLAINTIFFS, the other CALIFORNIA
4 LABOR SUB-CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members
5 DEFENDANT's uniform practice and policy of failing to pay the CALIFORNIA LABOR SUB-
6 CLASS Members and CALIFORNIA EXEMPT SUB-CLASS for all vested vacation and
7 holiday time accumulated at employment termination violated and continues to violate Section
8 227.3 of the California Labor Code.

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

17 **NINTH CAUSE OF ACTION**

18 **For Failure to Pay Sick Pay Wages**

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

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

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

26 143. Cal Lab. Code § 233 provides that an employer must permit an employee to
27
28

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

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

27 145. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
28

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

17 146. As alleged herein and as a matter of policy and practice, DEFENDANT routinely
18 underpays sick pay wages and thus did not timely pay PLAINTIFFS, the other CALIFORNIA
19 LABOR SUB-CLASS Members and the CALIFORNIA EXEMPT SUB-CLASS Members all
20 owing and underpaid sick pay wages. As a result, DEFENDANT violates Cal. Lab. Code §§
21 201-204, 210, 233, and 246, among other Labor Code provisions. PLAINTIFFS are informed
22 and believe that DEFENDANT was advised by skilled lawyers and knew, or should have
23 known, of the mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially
24 since the California Supreme Court has explained that "[c]ourts have recognized that 'wages'
25 also include those benefits to which an employee is entitled as a part of his or her compensation,
26 including money, room, board, clothing, vacation pay, *and sick pay.*" *Murphy v. Kenneth Cole*
27 *Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully
28 fails to timely pay PLAINTIFFS, the other CALIFORNIA LABOR SUB-CLASS Members and

1 the CALIFORNIA EXEMPT SUB-CLASS Members all sick pay wages due, DEFENDANT
2 is subject to applicable penalties.

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

7
8 **PRAYER FOR RELIEF**

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

11 1. On behalf of the CALIFORNIA CLASS:

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

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

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

applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;

F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,

G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the CALIFORNIA EXEMPT CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA EXEMPT CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA EXEMPT CLASS; and,

D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA EXEMPT CLASS.

1 4. On behalf of the CALIFORNIA EXEMPT SUB-CLASS:

- 2 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
3 and Ninth Causes of Action asserted by the CALIFORNIA EXEMPT SUB-
4 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 5 B) Compensatory damages, according to proof at trial, including compensatory
6 damages for minimum and overtime compensation due PLAINTIFFS and the
7 other members of the CALIFORNIA EXEMPT SUB-CLASS, during the
8 applicable CALIFORNIA EXEMPT SUB-CLASS PERIOD plus interest thereon
9 at the statutory rate;
- 10 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
11 in which a violation occurs and one hundred dollars (\$100) per each member of
12 the CALIFORNIA EXEMPT SUB-CLASS for each violation in a subsequent
13 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
14 and an award of costs for violation of Cal. Lab. Code § 226;
- 15 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
16 the applicable IWC Wage Order;
- 17 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
18 1197;
- 19 F) The amount of the expenses PLAINTIFFS and each member of the
20 CALIFORNIA EXEMPT SUBCLASS incurred in the course of their job duties,
21 plus interest, and costs of suit.; and,
- 22 G) The wages of all terminated employees in the CALIFORNIA EXEMPT
23 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
24 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

25 5. On all claims:

- 26 A) An award of interest, including prejudgment interest at the legal rate;
- 27 B) Such other and further relief as the Court deems just and equitable; and,
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

Dated: May 8, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Nicholas J. De Blouw
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

Dated: May 8, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Nicholas J. De Blouw
Attorneys for Plaintiff