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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

JAYMIE SALINAS and GLORIA
ZAMORA, individually, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiff,

vs.

HOMEFIRST SERVICES OF SANTA
CLARA COUNTY, a California Non-Profit
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 23CV418047

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246;
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiffs Jaymie Salinas and Gloria Zamora (“PLAINTIFFS”), individually, on behalf
2 of themselves, and all other similarly situated current and former employees alleges on
3 information and belief, except for her own acts and knowledge which are based on personal
4 knowledge, the following.

5
6 **THE PARTIES**

7 1. Homefirst Services of Santa Clara County (“DEFENDANT”) is a California non-
8 profit corporation that at all relevant times mentioned herein conducted and continues to
9 conduct substantial business in the state of California.

10 2. DEFENDANT is a leading provider of services, shelter, and housing opportunities
11 to the homeless and those at risk of homelessness in Santa Clara County.

12 3. Plaintiff Jaymie Salinas was employed by DEFENDANT in California from
13 August of 2022 to February of 2023. Plaintiff Jaymie Salinas was at all times classified by
14 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
15 required meal and rest periods and payment of minimum and overtime wages due for all time
16 worked.

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

22 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
23 class, defined as all current and former hourly employees employed by DEFENDANT in
24 California who were classified as non-exempt (the “CALIFORNIA CLASS”) during the period
25 from June 10, 2022 to May 10, 2024 (the “CALIFORNIA CLASS PERIOD”). The amount in
26 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
27 dollars (\$5,000,000.00).
28

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

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

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

1
2 **THE CONDUCT**

3 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
4 was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time
5 worked, meaning the time during which an employee is subject to the control of an
6 employer, including all the time the employee is suffered or permitted to work.
7 DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members to work
8 without paying them for all the time they are under DEFENDANT's control. Among other
9 things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is
10 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time
11 interrupted by work assignments while clocked out for what should have been
12 PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company
13 policy and procedure, administers a uniform practice of rounding the actual time worked and
14 recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of
15 DEFENDANT, so that during the course of their employment, PLAINTIFFS and
16 CALIFORNIA CLASS Members are paid less than they would have been paid had they
17 been paid for actual recorded time rather than "rounded" time. Additionally,
18 DEFENDANT engages in the practice of requiring PLAINTIFFS and CALIFORNIA
19 CLASS Members to perform work off the clocking that DEFENDANT, as a condition of
20 employment, required these employees to submit to mandatory temperature checks and
21 symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
22 timekeeping system for the workday. As a result, PLAINTIFFS and other CALIFORNIA
23 CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal
24 breaks by working without their time being correctly recorded and without compensation at
25 the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other
26 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
27 business records.
28

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

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

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

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

1 meal period times to avoid paying penalties to PLAINTIFFS and other CALIFORNIA
2 CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS
3 therefore forfeit meal breaks without additional compensation and in accordance with
4 DEFENDANT's corporate policy and practice.

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

26 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
27 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
28 actual amount of time these employees worked. Pursuant to the Industrial Welfare

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

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

1 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS
2 an itemized wage statement that lists all the requirements under California Labor Code 226
3 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
4 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
5 § 226.

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

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

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

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

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

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

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

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

25 23. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
27 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct
28 consequence of discharging their duties on behalf of DEFENDANT. Under California

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

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

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

24 26. DEFENDANT knew or should have known that PLAINTIFFS and other
25 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
26 not interfere with the performance of their duties, and that DEFENDANT did not provide
27 suitable seating and/or did not allow them to sit when it did not interfere with the
28 performance of their duties.

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

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

JURISDICTION AND VENUE

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

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

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

4 5 **THE CALIFORNIA CLASS**

6 31. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
7 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
8 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
9 California class, defined as all current and former hourly employees employed by
10 DEFENDANT in California who were classified as non-exempt (the "CALIFORNIA
11 CLASS") during the period from June 10, 2022 to May 10, 2024 (the "CALIFORNIA
12 CLASS PERIOD") The amount in controversy for the aggregate claim of CALIFORNIA
13 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

24 34. DEFENDANT has the legal burden to establish that each and every
25 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
26 required by California laws. The DEFENDANT, however, as a matter of policy and
27 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
28 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS

1 Member is paid as required by law. This common business practice is applicable to each
2 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
3 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
4 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

5 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
6 CLASS Members is impracticable.

7 36. DEFENDANT violated the rights of the CALIFORNIA CLASS under
8 California law by:

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

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

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

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

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

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

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

27 1) Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA CLASS which would establish

1 incompatible standards of conduct for the parties opposing the
2 CALIFORNIA CLASS; and/or,

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

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

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

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

27 1) The interests of the members of the CALIFORNIA CLASS in
28 individually controlling the prosecution or defense of separate

1 actions in that the substantial expense of individual actions will
2 be avoided to recover the relatively small amount of economic
3 losses sustained by the individual CALIFORNIA CLASS
4 Members when compared to the substantial expense and burden
5 of individual prosecution of this litigation;

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

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

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

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

24 4) A class action is superior to other available methods for the fair
25 and efficient adjudication of this litigation because class
26 treatment will obviate the need for unduly and unnecessary
27 duplicative litigation that is likely to result in the absence of
28

1 certification of this action pursuant to Cal. Code of Civ. Proc. §
2 382.

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

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

- 1 (g) DEFENDANT has acted or refused to act on grounds generally
2 applicable to the CALIFORNIA CLASS, thereby making final class-
3 wide relief appropriate with respect to the CALIFORNIA CLASS as a
4 whole;
- 5 (h) The members of the CALIFORNIA CLASS are readily ascertainable
6 from the business records of DEFENDANT; and,
- 7 (i) Class treatment provides manageable judicial treatment calculated to
8 bring a efficient and rapid conclusion to all litigation of all wage and
9 hour related claims arising out of the conduct of DEFENDANT as to
10 the members of the CALIFORNIA CLASS.

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

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

18 41. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
19 Eighth and Ninth causes Action on behalf of a California sub-class, defined as themselves
20 and a California class, defined as all current and former hourly employees employed by
21 DEFENDANT in California who were classified as non-exempt (the "CALIFORNIA
22 LABOR SUB-CLASS") during the period from June 10, 2022 to May 10, 2024 (the
23 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. §
24 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
25 CLASS Members is under five million dollars (\$5,000,000.00).

26 42. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
27 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
28 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT

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

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

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

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

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

- 1 (d) The proper measure of damages and penalties owed to the members of
2 the CALIFORNIA LABOR SUB-CLASS; and,
3 (e) Whether DEFENDANT's conduct was willful.

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

- 6 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
7 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
8 CLASS all wages due for overtime worked, for which DEFENDANT is
9 liable pursuant to Cal. Lab. Code § 1194;
10 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
11 accurately pay PLAINTIFFS and the members of the CALIFORNIA
12 LABOR SUB-CLASS the correct minimum wage pay for which
13 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
14 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
15 the members of the CALIFORNIA LABOR SUB-CLASS with an
16 accurate itemized statement in writing showing the corresponding
17 correct amount of wages earned by the employee;
18 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
19 PLAINTIFFS and the other members of the CALIFORNIA LABOR
20 SUB-CLASS with all legally required off-duty, uninterrupted thirty
21 (30) minute meal breaks and the legally required off-duty rest breaks;
22 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
23 when an employee is discharged or quits from employment, the
24 employer must pay the employee all wages due without abatement, by
25 failing to tender full payment and/or restitution of wages owed or in the
26 manner required by California law to the members of the
27 CALIFORNIA LABOR SUB-CLASS who have terminated their
28 employment; and,

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

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

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

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

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

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

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

21 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
22 acted or refused to act on grounds generally applicable to the
23 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
24 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
25 whole in that DEFENDANT fails to pay all wages due. Including the
26 correct wages for all time worked by the members of the
27 CALIFORNIA LABOR SUB-CLASS as required by law;
28

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

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

1 avoid asserting their legal rights out of fear of retaliation by
2 DEFENDANT, which may adversely affect an individual's job
3 with DEFENDANT or with a subsequent employer, the Class
4 Action is the only means to assert their claims through a
5 representative; and,

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

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

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

- 1 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-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
6 and other improprieties, and in obtaining adequate compensation for the
7 damages and injuries which DEFENDANT's actions have inflicted
8 upon the CALIFORNIA LABOR SUB-CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of
11 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally
13 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
14 making final class-wide relief appropriate with respect to the
15 CALIFORNIA LABOR SUB-CLASS as a whole;
- 16 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
17 ascertainable from the business records of DEFENDANT. The
18 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
19 CLASS Members who worked for DEFENDANT in California at any
20 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 21 (i) Class treatment provides manageable judicial treatment calculated to
22 bring a efficient and rapid conclusion to all litigation of all wage and
23 hour related claims arising out of the conduct of DEFENDANT as to
24 the members of the CALIFORNIA LABOR SUB-CLASS.

25
26 **FIRST CAUSE OF ACTION**

27 **For Unlawful Business Practices**

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

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

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

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

7 52. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
8 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
9 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
10 competition as follows:

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

19 Cal. Bus. & Prof. Code § 17203.

20 53. By the conduct alleged herein, DEFENDANT has engaged and continues to
21 engage in a business practice which violates California law, including but not limited to, the
22 applicable Industrial Wage Order(s), the California Code of Regulations and the California
23 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
24 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
25 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
26 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
27 held to constitute unfair competition, including restitution of wages wrongfully withheld.

28 54. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
unfair in that these practices violate public policy, were immoral, unethical, oppressive,
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section

1 17203 of the California Business & Professions Code, including restitution of wages
2 wrongfully withheld.

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

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

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

23 58. Therefore, PLAINTIFFS demands on behalf of herself and on behalf of each
24 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
25 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
26 pay for each workday in which a second off-duty meal period was not timely provided for
27 each ten (10) hours of work.
28

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

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

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

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

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

26 64. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no
27 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
28 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur

1 unabated. As a result of the unlawful and unfair business practices described herein,
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will
3 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
4 from continuing to engage in these unlawful and unfair business practices.

5
6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Minimum Wages**

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

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

10 **and Against All Defendants)**

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

14 66. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
15 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
16 California Labor Code and the Industrial Welfare Commission requirements for
17 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS
18 and CALIFORNIA CLASS Members.

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

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

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

27 70. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the
28 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct

1 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
2 unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
3 other members of the CALIFORNIA LABOR SUB-CLASS.

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

9 72. 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 and other members of the CALIFORNIA LABOR SUB-CLASS.
12 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
13 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
14 requirements and other applicable laws and regulations.

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

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

25 75. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
26 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true time they worked, PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic

1 injury in amounts which are presently unknown to them and which will be ascertained
2 according to proof at trial.

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

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

18 78. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
19 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
20 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
21 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
22 extent minimum wage compensation is determined to be owed to the CALIFORNIA
23 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
24 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
25 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
26 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
27 conduct as alleged herein was willful, intentional and not in good faith. Further,
28

1 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
2 and recover statutory costs.

3
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Compensation**

6 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and with the despicable intent of depriving them of their property and legal rights, and
2 otherwise causing them injury in order to increase company profits at the expense of these
3 employees.

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

16 **FOURTH CAUSE OF ACTION**

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

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

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

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

24 95. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
27 and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA
28

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

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

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

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

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

21
22 **SEVENTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 2802]**

25 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
26 **Defendants)**
27
28

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

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

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

8 108. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
9 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
10 CLASS members for required expenses incurred in the discharge of their job duties for
11 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
12 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
13 limited to, costs related to using their personal cellular phones on behalf of and for the
14 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
15 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
16 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
17 and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
18 CLASS members for expenses resulting from using their personal cellular phones and home
19 offices for DEFENDANT within the course and scope of their employment for
20 DEFENDANT. These expenses were necessary to complete their principal job duties.
21 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
22 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS
23 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
24 and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
25 these expenses as an employer is required to do under the laws and regulations of California.

26 109. PLAINTIFFS therefore demand reimbursement for expenditures or losses
27 incurred by themselves and the CALIFORNIA LABOR SUB-CLASS members in the
28

1 discharge of their job duties for DEFENDANT, or their obedience to the directions of
2 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

3
4 **EIGHTH CAUSE OF ACTION**

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

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

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

8 **and Against All Defendants)**

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

12 111. Cal. Lab. Code § 200 provides, in relevant part, that:

13 As used in this article:

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

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

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

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

25 If an employee not having a written contract for a definite period quits his
26 or her employment, his or her wages shall become due and payable not
27 later than 72 hours thereafter, unless the employee has given 72 hours
28 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.

29 114. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
30 SUB-CLASS Members' employment contract.

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

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

7 116. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
8 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
9 owed as required by law. Additionally, at all times during the term of PLAINTIFF's
10 employment with DEFENDANT, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
11 Members earned and accrued vested vacation and holiday time on the date of their
12 termination pursuant to DEFENDANT's uniform vacation policies and applicable California
13 law. The amount of vacation pay PLAINTIFFS and the other CALIFORNIA LABOR SUB-
14 CLASS Members earned and accumulated is evidenced by DEFENDANT's business
15 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
16 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay
17 such wages at the regular rate of pay and more specifically the final rate of pay that included
18 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
19 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFFS and other
20 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of
21 including all of PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-
22 discretionary incentive compensation into the vacation wage payment calculations.
23 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
24 PLAINTIFFS and other CALIFORNIA LABOR CLASS Members would be paid vacation
25 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
26 practice, policy and procedure to deny paying the PLAINTIFFS and the other members of
27 the CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
28 DEFENDANT failed to pay the PLAINTIFFS and the members of the CALIFORNIA
LABOR SUB-CLASS all vested vacation time as wages due upon employment termination,
in violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,

1 DEFENDANT underpaid waiting time penalties to PLAINTIFFS and other CALIFORNIA
2 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
3 PLAINTIFF's' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
4 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
5 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to
6 provide compensation for earned, accrued and vested vacation and holiday time, as well as
7 the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
8 unlawful, unfair and deceptive practice to the detriment of the PLAINTIFFS and the
9 members of the CALIFORNIA LABOR SUB-CLASS . DEFENDANT's uniform practice
10 and policy of failing to pay the LABOR SUB-CLASS Members for all vested vacation and
11 holiday time accumulated at employment termination violated and continues to violate
12 Section 227.3 of the California Labor Code.

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

20
21 **NINTH CAUSE OF ACTION**

22 **For Failure to Pay Sick Pay Wages**

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

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

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

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

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

26 121. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
27 during each calendar month and are to be paid no later than the payday for the next regular
28 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically

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

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

1 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
2 penalties.

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

7 **TENTH CAUSE OF ACTION**

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

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

10 **(By Plaintiff Jaymie Salinas and Against All Defendants)**

11 124. PLAINTIFFS reallege and incorporates by this reference, as though fully set
12 forth herein, the prior paragraphs of this Complaint.

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

23 126. Plaintiff Jaymie Salinas, and such persons that may be added from time to
24 time who satisfy the requirements and exhaust the administrative procedures under the
25 Private Attorney General Act, brings this Representative Action on behalf of the State of
26 California with respect to herself and all current and former hourly employee employed by
27 DEFENDANT in California who were classified as non-exempt ("AGGRIEVED
28

1 EMPLOYEES") during the period of June 10, 2022 until May 10, 2024 (the "PAGA
2 PERIOD").

3 127. On February 14, 2023, Plaintiff Jaymie Salinas gave written notice by
4 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
5 certified mail to the employer of the specific provisions of this code alleged to have been
6 violated as required by Labor Code § 2699.3. The statutory waiting period for Plaintiff
7 Jaymie Salinas to add these allegations to the Complaint has expired. As a result, pursuant
8 to Section 2699.3, Plaintiff Jaymie Salinas may now commence a representative civil action
9 under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to
10 all AGGRIEVED EMPLOYEES as herein defined.

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

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

1 as the representative of the State of California for the illegal conduct perpetrated on Plaintiff
2 Jaymie Salinas and the AGGRIEVED EMPLOYEES.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
20 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
22 B) Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum and overtime compensation due PLAINTIFFS and the
24 other members of the CALIFORNIA LABOR SUB-CLASS, during the
25 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
26 at the statutory rate;
27 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
28 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 State of California and with respect to all AGGRIEVED EMPLOYEES:

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

4. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

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: April 26, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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DEMAND FOR A JURY TRIAL

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

Dated: April 26, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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