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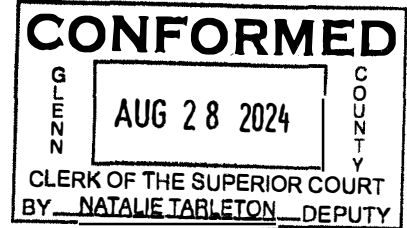
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF GLENN

FABIAN MARTINEZ, PAUL ADAMS,
MICHAEL RUSH, and RICHARD L. YOUNG,
individually on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

JOHNS MANVILLE, a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 23CV03097

**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; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*].

DEMAND FOR A JURY TRIAL

1 Plaintiffs Fabian Martinez, Paul Adams, Michael Rush, and Richard L. Young
2 (“PLAINTIFFS”), individually, on behalf of themselves and all other similarly situated current
3 and former employees allege on information and belief, except for their own acts and
4 knowledge which are based on personal knowledge, the following.

5
6 **THE PARTIES**

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

10 2. DEFENDANT manufactures insulation, roofing, and building materials.

11 3. Plaintiff FABIAN MARTINEZ was employed by DEFENDANT in California
12 from October of 2013 to January of 2023. Plaintiff FABIAN MARTINEZ was at all times
13 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled
14 to the legally required meal and rest periods and payment of minimum and overtime wages due
15 for all time worked.

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

20 5. Plaintiff MICHAEL RUSH was employed by DEFENDANT in California until
21 2021. Plaintiff MICHAEL RUSH was at all times classified by DEFENDANT as a non-exempt
22 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
23 payment of minimum and overtime wages due for all time worked.

24 6. Plaintiff RICHARD L. YOUNG was employed by DEFENDANT in California
25 until 2021. Plaintiff RICHARD L. YOUNG was at all times classified by DEFENDANT as a
26 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
27 periods and payment of minimum and overtime wages due for all time worked.

28 7. PLAINTIFFS bring this Class Action on behalf of themselves and a California

1 class, defined as all individuals who are or previously were employed by DEFENDANT and
2 who were classified as non-exempt in the State of California (the "CALIFORNIA CLASS")
3 from August 20, 2020 and ending on a date as determined by the Court (the "CALIFORNIA
4 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
5 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

26 10. The agents, servants and/or employees of the Defendants and each of them
27 acting on behalf of the Defendants acted within the course and scope of his, her or its
28

1 authority as the agent, servant and/or employee of the Defendants, and personally
2 participated in the conduct alleged herein on behalf of the Defendants with respect to the
3 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
4 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and
5 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
6 of the conduct of the Defendants' agents, servants and/or employees.

7 8 THE CONDUCT

9 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
10 was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time
11 worked, meaning the time during which an employee is subject to the control of an
12 employer, including all the time the employee is suffered or permitted to work.
13 DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members to work
14 without paying them for all the time they are under DEFENDANT's control. Among other
15 things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is
16 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time
17 interrupted by work assignments while clocked out for what should have been
18 PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company
19 policy and procedure, administers a uniform practice of rounding the actual time worked and
20 recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of
21 DEFENDANT, so that during the course of their employment, PLAINTIFFS and
22 CALIFORNIA CLASS Members are paid less than they would have been paid had they
23 been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT
24 engages in the practice of requiring PLAINTIFFS and CALIFORNIA CLASS Members to
25 perform work off the clock in that DEFENDANT, as a condition of employment, required
26 these employees to submit to mandatory temperature checks and symptom questionnaires for
27 COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the
28 workday. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit

1 minimum wage, overtime wage compensation, and off-duty meal breaks by working without
2 their time being correctly recorded and without compensation at the applicable rates.

3 DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA
4 CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

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

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

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

24 14. As a result of their rigorous work schedules, PLAINTIFFS and other
25 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
26 off duty meal breaks and were not fully relieved of duty for their meal periods.
27 PLAINTIFFS and other CALIFORNIA CLASS Members were required from time to time
28 to perform work as ordered by DEFENDANT for more than five (5) hours during some

1 shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
2 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal
3 period for some workdays in which these employees were required by DEFENDANT to
4 work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the
5 meal period times to avoid paying penalties to PLAINTIFFS and other CALIFORNIA
6 CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS
7 therefore forfeit meal breaks without additional compensation and in accordance with
8 DEFENDANT's corporate policy and practice.

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

1 work premises during their rest period.

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

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

1 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
2 wage statements failed to identify the accurate total hours worked each pay period. When
3 the hours shown on the wage statements were added up, they did not equal the actual total
4 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
5 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS
6 an itemized wage statement that lists all the requirements under California Labor Code 226
7 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
8 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
9 § 226.

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

14 in [I]n addition to, and entirely independent and apart from, any other penalty provided
15 this article, every person who fails to pay the wages of each employee as provided in
16 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
17 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.

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

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

28 21. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt

1 employees be calculated by dividing the employee's total wages, not including overtime
2 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
3 days of employment.

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

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

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

27 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
28 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses

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

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

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

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

1 suitable seating and/or did not allow them to sit when it did not interfere with the
2 performance of their duties.

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

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

22 **JURISDICTION AND VENUE**

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

27 32. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28

1 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT
2 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and
3 facilities in this County and/or conducts substantial business in this County, and (ii)
4 committed the wrongful conduct herein alleged in this County against members of the
5 CALIFORNIA CLASS.

6 **THE CALIFORNIA CLASS**

7 33. PLAINTIFFS brings the First Cause of Action for Unfair, Unlawful and
8 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
9 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
10 California class, defined as all individuals who are or previously were employed by
11 DEFENDANT and who were classified as non-exempt in the State of California (the
12 "CALIFORNIA CLASS") from August 20, 2020 and ending on the date as determined by
13 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
14 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
15 (\$5,000,000.00).

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

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

26 36. DEFENDANT has the legal burden to establish that each and every
27 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
28 required by California laws. The DEFENDANT, however, as a matter of policy and

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

7 37. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 38. DEFENDANT violated the rights of the CALIFORNIA CLASS under
10 California law by:

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

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

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

CALIFORNIA CLASS;

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

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

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

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

1) Inconsistent or varying adjudications with respect to individual

1 members of the CALIFORNIA CLASS which would establish
2 incompatible standards of conduct for the parties opposing the
3 CALIFORNIA CLASS; and/or,

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

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

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

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

- 28 1) The interests of the members of the CALIFORNIA CLASS in

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

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

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

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

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

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

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

3 41. 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) PLAINTIFFS, 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
24 the 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 42. 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 43. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
17 Eighth, and Ninth causes Action on behalf of a class defined as all individuals who are or
18 previously were employed by DEFENDANT and who were classified as non-exempt in the
19 State of California (the "CALIFORNIA CLASS") from August 20, 2020 and ending on the
20 date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). pursuant to Cal.
21 Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
22 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

23 44. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
24 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
25 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
26 failed to correctly calculate compensation for the time worked by PLAINTIFFS and the
27 other members of the CALIFORNIA CLASS and reporting time wages owed to these
28 employees, even though DEFENDANT enjoyed the benefit of this work, required

employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

46. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

47. Common questions of law and fact exist as to members of the CALIFORNIA CLASS, including, but not limited, to the following:

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

48. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

- 1 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
2 PLAINTIFFS and the members of the CALIFORNIA CLASS all
3 wages due for overtime worked, for which DEFENDANT is liable
4 pursuant to Cal. Lab. Code § 1194;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
6 accurately pay PLAINTIFFS and the members of the CALIFORNIA
7 CLASS the correct minimum wage pay for which DEFENDANT is
8 liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
10 the members of the CALIFORNIA CLASS with an accurate itemized
11 statement in writing showing the corresponding correct amount of
12 wages earned by the employee;
- 13 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
14 PLAINTIFFS and the other members of the CALIFORNIA CLASS
15 with all legally required off-duty, uninterrupted thirty (30) minute meal
16 breaks and the legally required off-duty rest breaks;
- 17 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
18 when an employee is discharged or quits from employment, the
19 employer must pay the employee all wages due without abatement, by
20 failing to tender full payment and/or restitution of wages owed or in the
21 manner required by California law to the members of the
22 CALIFORNIA CLASS who have terminated their employment; and,
- 23 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
24 and the CALIFORNIA CLASS members with necessary expenses
25 incurred in the discharge of their job duties.

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

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

1 that the joinder of all CALIFORNIA CLASS Members is impracticable
2 and the disposition of their claims as a class will benefit the parties and
3 the Court;

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

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

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

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

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

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

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

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

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

26 1) The interests of the members of the CALIFORNIA CLASS in
27 individually controlling the prosecution or defense of separate
28 actions in that the substantial expense of individual actions will

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

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

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

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

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

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

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

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

1 whole;

- 2 (h) The members of the CALIFORNIA CLASS are readily ascertainable
3 from the business records of DEFENDANT. The CALIFORNIA
4 CLASS consists of all CALIFORNIA CLASS Members who worked
5 for DEFENDANT in California at any time during the CALIFORNIA
6 CLASS PERIOD; 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
12 **FIRST CAUSE OF ACTION**

13 **For Unlawful Business Practices**

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

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

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

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

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

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

1 competition.

2 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

23 63. All the acts described herein as violations of, among other things, the
24 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
25 California Labor Code, were unlawful and in violation of public policy, were immoral,
26 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
27 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
28 *seq.*

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

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

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

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24
25 **SECOND CAUSE OF ACTION**

26 **For Failure To Pay Minimum Wages**

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

28 **(By PLAINTIFFS and the CALIFORNIA CLASS**

and Against All Defendants)

67. 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.

68. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

72. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA CLASS.

73. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

74. In committing these violations of the California Labor Code, DEFENDANT inaccurately calculated the correct time worked and consequently underpaid the actual time

1 worked by PLAINTIFFS and other members of the CALIFORNIA CLASS.
2 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
3 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
4 requirements and other applicable laws and regulations.

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

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

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

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

25 79. In performing the acts and practices herein alleged in violation of California
26 labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all
27 time worked and provide them with the requisite compensation, DEFENDANT acted and
28 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the

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

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

16
17 **THIRD CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

19 **[Cal. Lab. Code § 510]**

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

21 81. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
22 and incorporate by this reference, as though full set forth herein, the prior paragraphs of this
23 Complaint.

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

1 workweek.

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

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

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

13 86. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and
14 CALIFORNIA CLASS Members were required, permitted or suffered by DEFENDANT to
15 work for DEFENDANT and were not paid for all the time they worked, including overtime
16 work.

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

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

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

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

12 90. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and the other
13 members of the CALIFORNIA CLASS have been paid less for overtime worked that they
14 are entitled to, constituting a failure to pay all earned wages.

15 91. DEFENDANT failed to accurately pay the PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS overtime wages for the time they worked which was
17 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
18 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA
19 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
20 failed to accurately record and pay as evidenced by DEFENDANT's business records and
21 witnessed by employees.

22 92. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
23 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the
24 true amount of time they worked, PLAINTIFFS and the other members of the
25 CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in
26 amounts which are presently unknown to them and which will be ascertained according to
27 proof at trial.

28 93. DEFENDANT knew or should have known that PLAINTIFFS and the other

1 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
2 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not
3 pay employees for their labor as a matter of company policy, practice and procedure, and
4 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS for overtime worked.

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

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

25
26 **FOURTH CAUSE OF ACTION**

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

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

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

2 96. PLAINTIFFS, 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 97. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
6 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
7 CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor
8 Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA CLASS
9 MEMBERS did not prevent these employees from being relieved of all of their duties for
10 the legally required off-duty meal periods. As a result of their rigorous work schedules,
11 PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time not fully
12 relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
13 failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with legally
14 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
15 business records from time to time. Further, DEFENDANT failed to provide PLAINTIFFS
16 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays
17 in which these employees were required by DEFENDANT to work ten (10) hours of work
18 from time to time. As a result, PLAINTIFFS and other members of the CALIFORNIA
19 CLASS therefore forfeited meal breaks without additional compensation and in accordance
20 with DEFENDANT's strict corporate policy and practice.

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

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

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

5 100. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
6 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
7 this Complaint.

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

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

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

27 **SIXTH CAUSE OF ACTION**

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

1 [Cal. Lab. Code § 226]

2 (By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)

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

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

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

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

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

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

22 ///

23 ///

24 **SEVENTH CAUSE OF ACTION**

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

26 **[Cal. Lab. Code § 2802]**

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

28 108. PLAINTIFFS and the other CALIFORNIA CLASS members reallege and

1 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
2 Complaint.

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

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

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

25 111. PLAINTIFFS therefore demands reimbursement for expenditures or losses
26 incurred by themselves and the CALIFORNIA CLASS members in the discharge of their
27 job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
28 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

1 **EIGHTH CAUSE OF ACTION**

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

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

4 **(By PLAINTIFFS and the CALIFORNIA CLASS**

5 **and Against All Defendants)**

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

9 113. Cal. Lab. Code § 200 provides, in relevant part, that:

10 As used in this article:

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

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

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

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

22 If an employee not having a written contract for a definite period quits his
23 or her employment, his or her wages shall become due and payable not
24 later than 72 hours thereafter, unless the employee has given 72 hours
25 previous notice of his or her intention to quit, in which case the employee
26 is entitled to his or her wages at the time of quitting. Notwithstanding any
27 other provision of law, an employee who quits without providing a 72-
28 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.

29 116. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
Members' employment contract.

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

31 If an employer willfully fails to pay, without abatement or reduction, in
32 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
33 employee who is discharged or who quits, the wages of the employee shall

1 continue as a penalty from the due date thereof at the same rate until paid
2 or until an action therefor is commenced; but the wages shall not continue
for more than 30 days.

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

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

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

16 **NINTH CAUSE OF ACTION**

17 **For Failure to Pay Sick Pay Wages**

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

19 **(By PLAINTIFFS and the CALIFORNIA CLASS**

20 **and Against All Defendants)**

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

24 121. Cal Lab. Code § 233 provides that an employer must permit an employee to
25 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
26 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
27 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
28

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

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

22 123. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
23 during each calendar month and are to be paid no later than the payday for the next regular
24 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
25 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
26 no later than the payday for the next regular payroll period after accrued sick leave is used as
27 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
28 employee, wages earned and unpaid at the time of discharge are due and payable

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

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

26 125. Such a pattern, practice, and uniform administration of corporate policy is
27 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-
28 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,

1 attorney's fees, and costs of suit.

2
3 **TENTH CAUSE OF ACTION**

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

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

6 **(By Plaintiff FABIAN MARTINEZ and Against All Defendants)**

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

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

19 128. Plaintiff FABIAN MARTINEZ, and such persons that may be added from
20 time to time who satisfy the requirements and exhaust the administrative procedures under
21 the Private Attorney General Act, brings this Representative Action on behalf of the State of
22 California with respect to themselves and all individuals who are or previously were
23 employed by DEFENDANT in the State of California and classified as non-exempt
24 employees ("AGGRIEVED EMPLOYEES") during the time period of February 10, 2022
25 and ending on the date as determined by the Court (the "PAGA PERIOD").

26 129. On February 10, 2023, Plaintiff FABIAN MARTINEZ gave written notice by
27 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
28 certified mail to the employer of the specific provisions of this code alleged to have been

1 violated as required by Labor Code § 2699.3. The statutory waiting period for Plaintiff
2 FABIAN MARTINEZ to add these allegations to the Complaint has expired. As a result,
3 pursuant to Section 2699.3, Plaintiff FABIAN MARTINEZ may now commence a
4 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
5 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

22 23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFFS prays for judgment against each Defendant, jointly and
25 severally, as follows:

26 1. On behalf of the CALIFORNIA CLASS:

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

- 1 B) An order temporarily, preliminarily and permanently enjoining and restraining
2 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 3 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
4 withheld from compensation due to PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS; and,
- 6 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
7 for restitution of the sums incidental to DEFENDANT's violations due to
8 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
- 9 2. On behalf of the CALIFORNIA CLASS:
- 10 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
11 and Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class
12 action pursuant to Cal. Code of Civ. Proc. § 382;
- 13 B) Compensatory damages, according to proof at trial, including compensatory
14 damages for minimum and overtime compensation due PLAINTIFFS and the
15 other members of the CALIFORNIA CLASS, during the applicable
16 CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;
- 17 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
18 in which a violation occurs and one hundred dollars (\$100) per each member of
19 the CALIFORNIA CLASS for each violation in a subsequent pay period, not
20 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award
21 of costs for violation of Cal. Lab. Code § 226;
- 22 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
23 the applicable IWC Wage Order;
- 24 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
25 1197;
- 26 F) The amount of the expenses PLAINTIFFS and each member of the
27 CALIFORNIA CLASS incurred in the course of their job duties, plus interest,
28 and costs of suit; and,

- 1 G) The wages of all terminated employees in the CALIFORNIA CLASS as a penalty
2 from the due date thereof at the same rate until paid or until an action therefore
3 is commenced, in accordance with Cal. Lab. Code § 203.
- 4 3. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:
- 6 A) Recovery of civil penalties as prescribed by the Labor Code Private
7 Attorneys General Act of 2004
- 8 4. On all claims:
- 9 A) An award of interest, including prejudgment interest at the legal rate;
10 B) Such other and further relief as the Court deems just and equitable; and,
11 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
12 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
13 and/or §2802.

14

15 Dated: August 27, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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18 By: /s/ Norman B. Blumenthal
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20 Kyle R. Nordrehaug
21 Nicholas J. De Blouw
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Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

Dated: August 27, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/Norman B. Blumenthal
Norman B. Blumenthal
Kyle R. Nordrehaug
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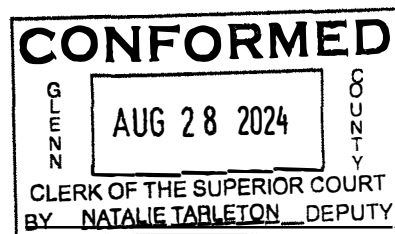
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF GLENN

FABIAN MARTINEZ, an individual,
on behalf of himself and on behalf of
all persons similarly situated,

Plaintiff,

v.

JOHNS MANVILLE, a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE No. 23CV03097

PROOF OF SERVICE

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PROOF OF SERVICE

I, Gerardo Galaviz, am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California, 92037.

On August 27, 2024, I served the document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT

— (BY MAIL): I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Diego, California. I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business (C.C.P. Section 10139a); 2015.5):

X (ELECTRONIC/E-MAIL): By e-mailing the document(s) to the persons at the confirmed e-mail address(es) below pursuant to CCP §1010.6.

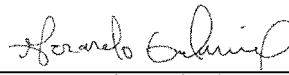
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 27, 2024 at San Diego, California.



Gerardo Galaviz