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By _____, Deputy
34-2023-00337859-CU-OE-GDS

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

MARIAH MACIAS, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

POSITIVE BEHAVIOR SUPPORTS CORP., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2023-00337859-CU-OE-GDS

**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, 246;
10. CONSTRUCTIVE DISCHARGE AND OTHER ADVERSE EMPLOYMENT ACTIONS IN VIOLATION OF PUBLIC POLICY; and
11. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

BY FAX

Mariah Macias (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated current and former employees alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following.

THE PARTIES

1. Positive Behavior Supports Corp. (“DEFENDANT”) is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in California.

2. DEFENDANT provides health services in Northern California.

3. PLAINTIFF was employed by DEFENDANT in California from September of 2022 to April of 2023. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

20 21 THE CONDUCT

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
23 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
24 meaning the time during which an employee is subject to the control of an employer, including all
25 the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and
26 CALIFORNIA CLASS Members to work without paying them for all the time they are under
27 DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while
28 clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was

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

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

20 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
21 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
22 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
23 performance for DEFENDANT. The non-discretionary incentive program provided all employees
24 paid on an hourly basis with incentive compensation when the employees met the various
25 performance goals set by DEFENDANT. However, when calculating the regular rate of pay in
26 order to pay overtime and meal and rest break premiums to PLAINTIFF and other CALIFORNIA
27 CLASS Members, DEFENDANT failed to include the incentive compensation as part of the
28 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break

1 premium pay. Management and supervisors described the incentive program to potential and new
2 employees as part of the compensation package. As a matter of law, the incentive compensation
3 received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the
4 “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime
5 compensation and meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS
6 Members by DEFENDANT.

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

19 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA
20 CLASS Members were also required from time to time to work in excess of four (4) hours without
21 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
22 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from
23 time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
24 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at
25 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
26 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one hour
27 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers to
28 provide employees with off-duty rest periods, which the California Supreme Court defined as time

1 during which an employee is relieved from all work related duties and free from employer control.
2 In so doing, the Court held that the requirement under California law that employers authorize and
3 permit all employees to take rest period means that employers must relieve employees of all duties
4 and relinquish control over how employees spend their time which includes control over the
5 locations where employees may take their rest period. Employers cannot impose controls that
6 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
7 DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
8 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFF and
9 other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

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

24 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
26 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
27 provides that every employer shall furnish each of his or her employees with an accurate itemized
28 wage statement in writing showing, among other things, gross wages earned and all applicable

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

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

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

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

28 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-

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

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

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

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

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

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

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

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

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

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

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

13 27. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
14 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
15 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
16 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty meal
17 and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for PLAINTIFF's missed
18 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent
19 PLAINTIFF from being relieved of all of PLAINTIFF's duties for the legally required off-duty
20 meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required
21 meal periods is evidenced by DEFENDANT's business records. Furthermore, specifically as to
22 PLAINTIFF, DEFENDANT failed to properly pay PLAINTIFF under the California Labor Code.
23 In February of 2023, PLAINTIFF reported to DEFENDANT and PLAINTIFF's Manager Amity
24 Wills about the violations of the California Labor Code, specifically DEFENDANT's failure to pay
25 PLAINTIFF for all time worked including off the clock work, but to no avail. In or around February
26 and March of 2023, and continuing through out the rest of PLAINTIFF's employment, PLAINTIFF
27 engaged in protected activity by complaining to DEFENDANT of DEFENDANT's failure to follow
28 the California Labor Code as it pertained to paying PLAINTIFF correctly. As a direct consequence

1 of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated against PLAINTIFF by
2 denying PLAINTIFF employment opportunities and promotions which resulted in lost wages and
3 harassing PLAINTIFF with unreasonable working demands. As a result, there is a causal link
4 between the protected activity and DEFENDANT's decision to retaliate against PLAINTIFF, which
5 is against public policy. Left with no other choice, on or around March 30, 2023, PLAINTIFF made
6 the decision to resign from her employment due to the hostile environment described above and
7 DEFENDANT's failure to take her complaints seriously.

8 9 **JURISDICTION AND VENUE**

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

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

19 20 **THE CALIFORNIA CLASS**

21 30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
22 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
23 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
24 individuals who are or previously were employed by DEFENDANT in California, including any
25 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees
26 (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the
27 filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA
28

1 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
2 Members is under five million dollars (\$5,000,000.00).

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

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

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

21 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
22 CLASS Members is impracticable.

23 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
24 law by:

- 25 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
26 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
27 deceptively having in place company policies, practices and procedures that
28 failed to record and pay PLAINTIFF and the other members of the

- 1 CALIFORNIA CLASS for all time worked, including minimum wages owed
2 and overtime wages owed for work performed by these employees; and,
3 (b) Committing an act of unfair competition in violation of the UCL, by failing
4 to provide the PLAINTIFF and the other members of the CALIFORNIA
5 CLASS with the legally required meal and rest periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA CLASS Members will avoid asserting their

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

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

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

- 12 (a) The questions of law and fact common to the CALIFORNIA CLASS
13 predominate over any question affecting only individual CALIFORNIA
14 CLASS Members because the DEFENDANT's employment practices are
15 applied with respect to the CALIFORNIA CLASS;
- 16 (b) A Class Action is superior to any other available method for the fair and
17 efficient adjudication of the claims of the members of the CALIFORNIA
18 CLASS because in the context of employment litigation a substantial number
19 of individual CALIFORNIA CLASS Members will avoid asserting their
20 rights individually out of fear of retaliation or adverse impact on their
21 employment;
- 22 (c) The members of the CALIFORNIA CLASS are so numerous that it is
23 impractical to bring all members of the CALIFORNIA CLASS before the
24 Court;
- 25 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able
26 to obtain effective and economic legal redress unless the action is maintained
27 as a Class Action;
- 28

- 1 (e) There is a community of interest in obtaining appropriate legal and equitable
2 relief for the acts of unfair competition, statutory violations and other
3 improprieties, and in obtaining adequate compensation for the damages and
4 injuries which DEFENDANT's actions have inflicted upon the
5 CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of the
8 CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable to
10 the CALIFORNIA CLASS, thereby making final class-wide relief
11 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 12 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
13 the business records of DEFENDANT; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to bring a
15 efficient and rapid conclusion to all litigation of all wage and hour related
16 claims arising out of the conduct of DEFENDANT as to the members of the
17 CALIFORNIA CLASS.

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

23
24 **THE CALIFORNIA LABOR SUB-CLASS**

25 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
26 and Ninth causes Action on behalf of a California sub-class, defined as all members of the
27 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California,
28 including any employees staffed with DEFENDANT by a third party, and classified as non exempt

1 employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3)
2 years prior to the filing of the complaint and ending on the date as determined by the Court (the
3 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The
4 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
5 under five million dollars (\$5,000,000.00).

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

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

22 43. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 26 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA LABOR SUB-CLASS
28

1 for missed meal and rest breaks in violation of the California Labor Code and
2 California regulations and the applicable California Wage Order;

3 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
5 wage statements;

6 (c) Whether DEFENDANT has engaged in unfair competition by the
7 above-listed conduct;

8 (d) The proper measure of damages and penalties owed to the members of the
9 CALIFORNIA LABOR SUB-CLASS; and,

10 (e) Whether DEFENDANT's conduct was willful.

11 45. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
12 California law by:

13 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF
14 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due
15 for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab.
16 Code § 1194;

17 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
18 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
19 SUB-CLASS the correct minimum wage pay for which DEFENDANT is
20 liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

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

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

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

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

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

1 unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT;
2 and,

3 (d) The representative PLAINTIFF will fairly and adequately represent and
4 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
5 retained counsel who are competent and experienced in Class Action
6 litigation. There are no material conflicts between the claims of the
7 representative PLAINTIFF and the members of the CALIFORNIA LABOR
8 SUB-CLASS that would make class certification inappropriate. Counsel for
9 the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of
10 all CALIFORNIA LABOR SUB-CLASS Members.

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

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

17 1) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA LABOR SUB-CLASS which would
19 establish incompatible standards of conduct for the parties opposing
20 the CALIFORNIA LABOR SUB-CLASS; or,

21 2) Adjudication with respect to individual members of the
22 CALIFORNIA LABOR SUB-CLASS which would as a practical
23 matter be dispositive of interests of the other members not party to
24 the adjudication or substantially impair or impede their ability to
25 protect their interests.

26 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
27 refused to act on grounds generally applicable to the CALIFORNIA LABOR
28 SUB-CLASS, making appropriate class-wide relief with respect to the

1 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails
2 to pay all wages due. Including the correct wages for all time worked by the
3 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

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

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

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

- 14 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
15 CLASS predominate over any question affecting only individual
16 CALIFORNIA LABOR SUB-CLASS Members;
- 17 (b) A Class Action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the CALIFORNIA
19 LABOR SUB-CLASS because in the context of employment litigation a
20 substantial number of individual CALIFORNIA LABOR SUB-CLASS
21 Members will avoid asserting their rights individually out of fear of
22 retaliation or adverse impact on their employment;
- 23 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous
24 that it is impractical to bring all members of the CALIFORNIA LABOR
25 SUB-CLASS before the Court;
- 26 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,
27 will not be able to obtain effective and economic legal redress unless the
28 action is maintained as a Class Action;

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

22
23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

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

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

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28

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

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

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

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

14 Cal. Bus. & Prof. Code § 17203.

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

23 53. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
24 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
25 substantially injurious to employees, and were without valid justification or utility for which this
26 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
27 Business & Professions Code, including restitution of wages wrongfully withheld.
28

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

12 55. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
13 and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other
14 members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANT.

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

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

25 58. PLAINTIFF further demands on behalf of herself and each member of the
26 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty
27 paid rest period was not timely provided as required by law.
28

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

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

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

17 62. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
18 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and
19 deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in
20 any unlawful and unfair business practices in the future.

21 63. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
24 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful
27 and unfair business practices.

1 64. Plaintiff seeks restitution under the Health Workplaces, Health Family Act of 2014
2 (“HWHF”) which provides, under Labor Code section 246, that sick pay must be paid at the regular
3 rate of pay, not the base hourly rate. Section 248.5 states that “any person or entity enforcing [the
4 HWHF” on behalf of the public as provided for under applicable state law shall, upon prevailing, be
5 entitled only to equitable, injunctive, or restitutionary relief....” Administrative relief will not be
6 adequate because it will not be as prompt and certain as the equitable remedy with respect to the
7 UCL violation predicated under Labor Code section 246 not would it be without impediment,
8 because regulators do not have resources to investigate and pursue every violation of the HWHF.
9 Plaintiff is informed and believes that it takes no less than six months to obtain a mandatory
10 settlement hearing from the Labor Commissioner after filing an initial claim for violations of the
11 Labor Code. If the settlement conference fails, it takes no less than six more months to obtain a
12 merits hearing before the Labor Commissioner. Additionally, administrative relief will not be
13 adequate with respect to the Labor Code section 246 allegations underlying the UCL claims as UCL
14 remedies are expressly cumulative and independent of any other remedy under the law under Cal.
15 Bus. & Prof Code § 17205:

16 Unless otherwise expressly provided, the remedies or penalties provided by this
17 chapter are cumulative to each other and to the remedies or penalties available under
all other laws of this state.

18 Finally, administrative relief will not be adequate as the UCL provides a four (4) year statute of
19 limitations which is greater than would otherwise be provided under a claim for a violation of the
20 California Labor Code. *Janik v. Rudy, Exelrod & Zieff*, 119 Cal. App. 4th 930, 936 (2004)
21 (“unlawfully withheld wages may be recovered as a restitutionary remedy in a UCL action and that
22 the UCL's four-year limitations period governs a UCL action based on failure to pay wages.”).

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1 72. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
3 by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT
4 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
5 of the California Labor Code, the Industrial Welfare Commission requirements and other applicable
6 laws and regulations.

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

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

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

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

27 77. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all

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

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

18 19 **THIRD CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

21 **[Cal. Lab. Code § 510]**

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

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

26 80. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
28 and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these

employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

81. 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.

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

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

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

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

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

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

4 87. 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 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
7 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not subject
8 to a valid collective bargaining agreement that would preclude the causes of action contained herein
9 this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA
10 LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable
11 rights provided by the State of California.

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

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

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

27 91. DEFENDANT knew or should have known that PLAINTIFF and the other members
28 of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

102. PLAINTIFF, 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.

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

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 2802]**

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

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

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

9 An employer shall indemnify his or her employee for all necessary expenditures or
10 losses incurred by the employee in direct consequence of the discharge of his or her
11 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.

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

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

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9 **EIGHTH CAUSE OF ACTION**

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

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

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

13 **and Against All Defendants)**

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

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

18 As used in this article:

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

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

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

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

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

1 purposes of the requirement to provide payment within 72 hours of the notice of
2 quitting.

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

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

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

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

1 members of the CALIFORNIA LABOR SUB-CLASS all vested vacation time as wages due upon
2 employment termination, in violation of the California Labor Code, Sections 201, 202, 203 and
3 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFF and other
4 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of including all
5 of PLAINTIFF's' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
6 compensation into the waiting time penalty calculations. This failure by DEFENDANT is believed
7 to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation
8 for earned, accrued and vested vacation and holiday time, as well as the corresponding waiting time
9 penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive practice to
10 the detriment of the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS .
11 DEFENDANT's uniform practice and policy of failing to pay the LABOR SUB-CLASS Members
12 for all vested vacation and holiday time accumulated at employment termination violated and
13 continues to violate Section 227.3 of the California Labor Code.

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

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21 **NINTH CAUSE OF ACTION**

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

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

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

25 **and Against All Defendants)**

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

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

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

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

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

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

24 122. Such a pattern, practice, and uniform administration of corporate policy is
25 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-
26 CLASS to applicable penalties, attorney's fees, and costs of suit.

1 **TENTH CAUSE OF ACTION**

2 **Constructive Discharge and Other Adverse Employment Actions**

3 **(By PLAINTIFF Against All Defendants)**

4 123. PLAINTIFF realleges and incorporates by reference, as though fully set forth herein,
5 the prior paragraphs of this Complaint.

6 124. Specifically as to PLAINTIFF, DEFENDANT failed to properly pay PLAINTIFF
7 under the California Labor Code. In February of 2023, PLAINTIFF reported to DEFENDANT and
8 PLAINTIFF's Manager Amity Wills about the violations of the California Labor Code, specifically
9 DEFENDANT's failure to pay PLAINTIFF for all time worked including off the clock work, but to
10 no avail. In or around February and March of 2023, and continuing through out the rest of
11 PLAINTIFF's employment, PLAINTIFF engaged in protected activity by complaining to
12 DEFENDANT of DEFENDANT's failure to follow the California Labor Code as it pertained to
13 paying PLAINTIFF correctly. As a direct consequence of PLAINTIFF's complaints to
14 DEFENDANT, DEFENDANT retaliated against PLAINTIFF by denying PLAINTIFF employment
15 opportunities and promotions which resulted in lost wages and harassing PLAINTIFF with
16 unreasonable working demands. As a result, there is a causal link between the protected activity
17 and DEFENDANT's decision to retaliate against PLAINTIFF, which is against public policy. Left
18 with no other choice, on or around March 30, 2023, PLAINTIFF made the decision to resign from
19 her employment due to the hostile environment described above and DEFENDANT's failure to
20 take her complaints seriously.

21 125. Subsequent to PLAINTIFF's participation in protective activity by complaining to
22 PLAINTIFF's managers about the unlawful employment practices, DEFENDANT subjected
23 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically, after
24 PLAINTIFF complained to her supervisor(s) of DEFENDANT's unlawful employment practices in
25 February and March of 2023, PLAINTIFF's working environment became unbearable and
26 impossible to return to. PLAINTIFF's managers continuously harassed her by giving her
27 unreasonable working demands. During this time, PLAINTIFF was plagued with ongoing work
28 pressures, obligations, and mistreatment by her supervisors, including but not limited to, belittling

1 and making false accusations about PLAINTIFF's performance. As a result, there is a causal link
2 between the protected activity and DEFENDANT's decision to retaliate against PLAINTIFF, which
3 is against public policy. As a direct consequence of PLAINTIFF's complaints to DEFENDANT,
4 DEFENDANT retaliated against PLAINTIFF by taking adverse employment actions described
5 herein.

6 126. Left with no other choice, on or around March 30,, 2022, PLAINTIFF made the
7 decision to resign from her employment due to the hostile environment described above and
8 DEFENDANT's failure to take her complaints seriously.

9 127. PLAINTIFF raised complaints of illegality while PLAINTIFF worked for
10 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT retaliated
11 against PLAINTIFF by taking adverse employment actions against PLAINTIFF

12 128. As a proximate result of DEFENDANT'S willful, knowing, and intentional, conduct,
13 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental and
14 physical pain and anguish, all to PLAINTIFF's damage in a sum according to proof.

15 129. As a result of DEFENDANT'S adverse employment actions against PLAINTIFF,
16 PLAINTIFF has suffered general and special damages in sums according to proof.

17 130. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive
18 manner, and fraudulent manner entitling PLAINTIFF to punitive damages.

19
20 **ELEVENTH CAUSE OF ACTION**

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

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

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

24 131. PLAINTIFF realleges and incorporates by reference, as though fully set forth herein,
25 the prior paragraphs of this Complaint.

26 132. PAGA is a mechanism by which the State of California itself can enforce state labor
27 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
28 labor law enforcement agencies. An action to recover civil penalties under PAGA is

1 fundamentally a law enforcement action designed to protect the public and not to benefit private
2 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of
3 "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA,
4 the California Legislature specified that "it was ... in the public interest to allow aggrieved
5 employees, acting as private attorneys general to recover civil penalties for Labor Code
6 violations..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

7 133. PLAINTIFF, and such persons that may be added from time to time who satisfy the
8 requirements and exhaust the administrative procedures under the Private Attorney General Act,
9 brings this Representative Action on behalf of the State of California with respect to herself and all
10 individuals who are or previously were employed by DEFENDANT in California, including any
11 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees
12 ("AGGRIEVED EMPLOYEES") during the time period of March 20, 2022 until a date as
13 determined by the Court (the "PAGA PERIOD").

14 134. On March 20, 2023, PLAINTIFF gave written notice by electronic mail to the Labor
15 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
16 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
17 See Exhibit #1, attached hereto and incorporated by this reference herein (PAGA Notice only
18 without draft complaint). The statutory waiting period for PLAINTIFF to add these allegations to
19 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
20 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the
21 State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

22 135. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
24 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and
25 provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay
26 overtime wages and sick pay wages, (e) failed to reimburse employees for required expenses, (f)
27 failed to provide wages when due, and (g) failed to provide suitable seating, all in violation of the
28 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 et seq., 210, 218, 221,

226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

136. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

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

22 3. On behalf of PLAINTIFF for the Tenth cause of action:

- 23 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.
- 24 B) Special and General damages according to proof;
- 25 C) For punitive damages in an amount necessary to make an example of and to punish
26 DEFENDANT and deter DEFENDANT from engaging in future similar conduct;
- 27 D) For loss of earnings (both past and future); and,
- 28 E) For interest at the legal rate in an amount according to proof.

1 4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
2 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
3 General Act of 2004.

4 5. On all claims:

- 5 A) An award of interest, including prejudgment interest at the legal rate;
6 B) Such other and further relief as the Court deems just and equitable; and,
7 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
8 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.
9

10 Dated: December 14, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
11

12
13 By: /s/ Nicholas J. De Blouw
14 Norman B. Blumenthal
Nicholas J. De Blouw
15 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

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

Dated: December 14, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

March 20, 2023
CA2922

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Positive Behavior Supports Corp.
Certified Mail #70223330000181863869
MICHEAL NOLAN
13950 MILTON AVE SUITE 200B
WESTMINSTER, CA 92683

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Positive Behavior Supports Corp. in California, including any employees staffed with Positive Behavior Supports Corp. by a third party, and classified as non-exempt employees during the time period of March 20, 2022 until a date as determined by the Court. Our offices represent Plaintiff Mariah Macias (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Positive Behavior Supports Corp. (“Defendant”). Plaintiff has been employed by Defendant in California since September of 2022. Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid

duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.