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COUNTY OF SAN BERNARDINO
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

LOUIS NORIEGA and THERESA MOORE,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No.: **CIVSB2319032**

**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 AND DOUBLE TIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB CODE §§201-204, 233, 246 *ET SEQ.*, 248 *ET SEQ.*;
10. FAILURE TO KEEP ACCURATE RECORDS;

11. FAILURE TO PROVIDE TIME AND PAY RECORDS AND PERSONNEL RECORDS;
12. FAILURE TO PROVIDE SUITABLE RESTING FACILITIES;
13. FAILURE TO PROVIDE WRITTEN COMMISSION AGREEMENTS;
14. FAILURE TO SEPARATELY COMPENSATE FOR REST PERIODS AND NONPRODUCTIVE TIME;
15. STATUTORY WAGE VIOLATIONS;
16. REFUSAL TO MAKE PAYMENT;
17. UNLAWFUL DEDUCTIONS;
18. FAILURE TO PROVIDE REPORTING TIME PAY;
19. VIOLATION OF CALIFORNIA DAY OF REST LAW;
20. FAILURE TO PROVIDE SUITABLE SEATING;
21. FAILURE TO PAY VESTED VACATION/PAID TIME OFF;
22. UNLAWFUL AGREEMENT/UNLAWFUL CRIMINAL HISTORY INQUIRIES;
23. FAILURE TO PAY WAGES TIMELY DURING EMPLOYMENT IN VIOLATION OF Cal. LAB. CODE §§ 204
23. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, et seq.].

DEMAND FOR A JURY TRIAL

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1 Louis Noriega and Theresa Moore (“PLAINTIFFS”), an individual, on behalf of themselves
2 and all other similarly situated current and former employees alleges on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following.

4 **THE PARTIES**

5 1. QVC, Inc. (“DEFENDANT”) is a corporation that at all relevant times mentioned
6 herein conducted and continues to conduct substantial business in California.

7 2. DEFENDANT is an American free-to-air television network, and flagship shopping
8 channel specializing in televised home shopping, owned by Qurate Retail Group.

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

14 4. Plaintiff Theresa Moore was employed by DEFENDANT in California from
15 October of 2021 to May 15, 2023. Plaintiff Theresa Moore was at all times classified by
16 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
17 required meal and rest periods and payment of minimum and overtime wages due for all time
18 worked.

19 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
20 defined as all individuals who are or previously were employed by DEFENDANT in California,
21 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
22 period of December 24, 2021 to August 22, 2024 (the “CALIFORNIA CLASS PERIOD”). The
23 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
24 million dollars (\$5,000,000.00).

25 6. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
26 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
27 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to
28 lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was an

1 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to
2 retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.
3 PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining
4 such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's
6 past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

24
25 **FACTUAL ALLEGATIONS**

26 1. During the relevant period, PLAINTIFFS, and each of the CALIFORNIA CLASS
27 Members worked for DEFENDANT in the State of California. At all times referenced herein,
28 DEFENDANT exercised control over PLAINTIFFS and CALIFORNIA CLASS Members, and

suffered and/or permitted them to work.

2. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods, as explained below.

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

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

3 4. Based on information and belief, DEFENDANTS implemented a policy and/or
4 practice of rounding meal period start and end times and/or automatically deducting at least thirty
5 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
6 PLAINTIFF and other CALIFORNIA CLASS Members were subject to DEFENDANTS' control
7 during purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
8 PLAINTIFF and CALIFORNIA CLASS Members of all wages owed.

9 5. Based on information and belief, CALIFORNIA CLASS Members were not paid
10 for all hours worked due to DEFENDANTS' policy and/or practice of paying according to
11 scheduled hours worked instead of actual time worked, time rounding policies and practices, and/or
12 mandated off-the clock work policies and/or practices. For example, CALIFORNIA CLASS
13 Members were frequently required to stand in line behind other employees to access
14 DEFENDANTS' time-keeping system/terminal and/or were required to spend time reinitiating
15 DEFENDANTS' time-keeping system before they could clock in for the start of their shifts and/or
16 after completing a purported meal period. For example, PLAINTIFF typically spent at least
17 approximately four (4) minutes standing in line each workday before PLAINTIFF could access
18 DEFENDANTS' time-keeping system/terminal to clock in for the start of PLAINTIFF's shift,
19 which said off-the-clock waiting time spent under DEFENDANTS' control each workday was
20 neither recorded nor compensated by DEFENDANTS, resulting in DEFENDANTS' failure to
21 compensate PLAINTIFF for all work time and the underpayment of wages owed to PLAINTIFF,
22 among other violations of the Labor Code described herein. Based on information and belief,
23 DEFENDANTS required CALIFORNIA CLASS Members to be at their assigned workstations at
24 the start of a scheduled shift, thereby forcing CALIFORNIA CLASS Members to gather work-
25 related equipment and/or safety gear, make any necessary adjustments to tools/equipment and/or
26 perform maintenance/cleaning tasks, don work clothing/uniforms and/or protective equipment,
27 and/or complete other work tasks prior to their scheduled shift and/or prior to clocking in/signing
28 in, thereby resulting in pre-shift off-the-clock work.

1 6. Based on information and belief, CALIFORNIA CLASS Members were required to
2 complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during
3 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
4 and overtime wages owed to CALIFORNIA CLASS Members. For example, based on information
5 and belief, DEFENDANTS required CALIFORNIA CLASS Members to clock out for the end of
6 their shifts but to continue working due to the need to return/maintain tools, clean and/or organize
7 their work stations/areas, provide shift status updates and/or debriefings and/or participate in work
8 meetings, respond to work-related communications and/or perform other work tasks off-the-clock,
9 resulting in the underpayment of minimum wages and overtime wages owed to CALIFORNIA
10 CLASS Members.

11 7. Based on information and belief, DEFENDANTS did not compensate
12 CALIFORNIA CLASS Members for all time spent donning and doffing personal protective
13 equipment, safety equipment and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses,
14 hats/bump caps/safety helmets and/or face masks) during meal periods, before the start of a
15 scheduled shift, and after completing a scheduled shift, resulting in DEFENDANTS' failure to pay
16 CALIFORNIA CLASS Members for all work time and the underpayment of minimum wages and
17 overtime wages owed to CALIFORNIA CLASS Members.

18 8. Based on information and belief, at times, DEFENDANTS' electronic employee
19 time-keeping system/app malfunctioned such that CALIFORNIA CLASS Members were required
20 to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or
21 were unable to clock in at all for the start of their shifts and/or clock back in from meal periods,
22 resulting in off-the-clock work and the underpayment of wages owed to Aggrieved Employees.
23 Based on information and belief, CALIFORNIA CLASS Members experienced the same issues
24 when clocking out for shifts and/or back in for meal periods. This time spent under
25 DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum
26 wages owed to CALIFORNIA CLASS Members.

27 9. Based on information and belief, CALIFORNIA CLASS Members were required to
28 undergo security screenings and/or other mandated screenings before and/or after a scheduled shift

1 and/or before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock
2 work.

3 10. Based on information and belief, DEFENDANTS required Aggrieved Employees to
4 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
5 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock
6 work. Based on information and belief, Aggrieved Employees were also pressured to complete
7 at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and
8 expectations. For example, based on information and belief, Aggrieved Employees were required
9 to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
10 related phone calls and/or messages they received to their phones and/or mobile devices and were
11 required to respond to, including but not limited to, communications from supervisors regarding
12 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved
13 Employees.

14 11. Based on information and belief, DEFENDANTS failed to pay Aggrieved
15 Employees for time they were required to spend completing orientation, policy questionnaires,
16 and/or time spent completing the onboarding process including but not limited to reviewing various
17 documents and policies provided by DEFENDANTS. Based on information and belief, this work
18 time was completed off-the-clock and was not compensated.

19 12. Based in information and belief, DEFENDANTS implemented a time-rounding
20 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
21 compensable time because the time-rounding system implemented by DEFENDANTS would
22 almost always, if not always, result in understating actual compensable work time.

23 13. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
24 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
25 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
26 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
27 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
28 forty (40) hours in a week.

1 14. Based on information and belief, DEFENDANTS had actual and/or constructive
2 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure
3 to provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
4 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
5 of California's minimum and overtime wage laws.

6 15. Based on information and belief, DEFENDANTS failed and continue to fail to pay
7 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
8 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work
9 in a work week, in violation of California's overtime laws.

10 16. Based on information and belief, DEFENDANTS failed to incorporate all non-
11 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive
12 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
13 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of
14 overtime wages owed to PLAINTIFF and other Aggrieved Employees. For example, based on
15 information and belief, PLAINTIFF and other Aggrieved Employees were compensated with
16 bonuses/incentive pay and/or shift differential pay and/or other non-discretionary compensation,
17 however, DEFENDANTS failed to incorporate all non-discretionary compensation into the regular
18 rate(s) of pay used to calculate the owed overtime rate(s) resulting in the miscalculation and
19 underpayment of overtime wages owed to PLAINTIFF and other Aggrieved Employees.

20 17. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
21 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
22 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
23 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
24 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
25 being forced to take late meal periods, interrupted meal periods, and/or work through part or all
26 their meal periods due to understaffing, the nature and constraints of their job duties and/or
27 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
28 periods completely. For example, based on information and belief, Aggrieved Employees were

1 forced to take late meal periods in order to complete assigned job duties. Based on information and
2 belief, Aggrieved Employees were at times, interrupted during purported meal periods and/or had
3 meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue
4 assigned job duties.

5 18. Based on information and belief, other Aggrieved Employees were consistently
6 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
7 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,
8 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
9 expectations.

10 19. Based on information and belief, DEFENDANTS implemented policies and/or
11 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
12 during unpaid meal periods.

13 20. Based on information and belief, DEFENDANTS required Aggrieved Employees to
14 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
15 into account when scheduling meal periods for Aggrieved Employees. Based on information and
16 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work. For example,
17 PLAINTIFF was typically required to perform pre-shift off-the-clock work in the form of including
18 but not limited to, waiting in line to access DEFENDANTS' timekeeping system / terminal and/or
19 reinitiating DEFENDANTS' timekeeping system resulting daily/near daily pre-shift off-the-clock
20 work that DEFENDANTS failed to take into account when scheduling any meal periods, resulting
21 in late meal periods.

22 21. Based on information and belief, despite DEFENDANTS' failure to provide lawful
23 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
24 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
25 deducting at least thirty minutes and/or forty-five minutes per shift for missed, on-duty, and/or
26 otherwise unlawful meal periods despite having actual and/or constructive knowledge that
27 PLAINTIFF and other Aggrieved Employees did not receive lawful meal periods.

28 22. Moreover, based on information and belief, Aggrieved Employees who worked

1 shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal
2 period. For example, at times, PLAINTIFF worked shifts lasting longer than ten (10) hours due to
3 including but not limited to, preshift off-the-clock work, however, DEFENDANTS failed to
4 provide PLAINTIFF with any version of a second meal period when PLAINTIFF worked shifts
5 lasting longer than ten (10) hours.

6 23. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
7 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
8 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
9 did DEFENDANTS have any sort of compliant policy in practice.

10 24. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
11 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
12 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS
13 illegally rounded the start and end times of purported meal periods resulting in PLAINTIFF and
14 other Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
15 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

16 25. Based on information and belief, DEFENDANTS had actual and/or constructive
17 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
18 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees,
19 in violation of California's meal period laws.

20 26. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
21 additional hour of wages at their respective regular rates of compensation for each workday a lawful
22 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all
23 for each workday a lawful meal period was not provided and/or failed to pay the proper meal period
24 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
25 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
26 compensation for purposes of calculating the owed meal period premium.

27 27. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
28 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every

four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

28. PLAINTIFF and other Aggrieved Employees were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking or timing of duty-free rest periods.

29. Based on information and belief, DEFENDANTS did not have a have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice. For example, based on information and belief, Aggrieved Employees were at times unable to take compliant rest periods due to their need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises.

30. Based on information and belief, DEFENDANTS failed to authorize and permit rest periods that were a "net" ten minutes in a suitable rest area. For example, to the extent rest periods were provided, DEFENDANTS frequently if not always required PLAINTIFF and other Aggrieved Employees to take rest periods that were less than a full ten minutes due to including but not limited to PLAINTIFF and other Aggrieved Employees being required to walk long distances across the warehouse/DEFENDANTS' facilities to any rest area from their workstations and/or from any rest area back to their workstations, resulting in the denial of a full "net" ten-minute rest period to PLAINTIFF and other Aggrieved Employees during many if not all shifts worked, in violation of California rest period law.

31. Based on information and belief, any purported rest periods were interrupted, cut short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of their job duties, and/or commentary from supervisors pressuring them to skip rest periods completely and/or take non-compliant rest periods.

32. Moreover, based on information and belief, DEFENDANTS failed to provide any form of a third rest period on shifts lasting longer than ten hours.

33. Based on information and belief, DEFENDANTS implemented policies and/or

practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS' control during rest periods.

34. Based on information and belief, Aggrieved Employees were pressured to complete their work duties according to a designated schedule such that rest periods were only taken once tasks were completed, and/or as time permitted.

35. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each workday a proper rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

36. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

37. DEFENDANTS' locations/facilities are generally similar in layout and design, and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided PLAINTIFF and Aggrieved Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and other Aggrieved Employees including but not limited to Aggrieved Employees working in DEFENDANTS' manufacturing centers, distribution centers, stores, warehouses, offices and/or other facilities were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal vehicles.

1 38. DEFENDANTS did not provide PLAINTIFF and Aggrieved Employees with
2 suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

3 39. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
4 Aggrieved Employees violated and continue to violate the applicable Wage Order, section 13(B)
5 and the California Labor Code, including but not limited to section 1198.

6 40. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed
7 to provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that
8 complied with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and
9 Aggrieved Employees with meal and rest periods that complied with Labor section 226.7, the wage
10 statements DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue
11 to fail to correctly set forth the gross wages earned, the total hours worked, the net wages earned,
12 and all applicable hourly rates in effect during the pay period and the corresponding number of
13 hours worked at each hourly rate by the employee.

14 41. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
15 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
16 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
17 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
18 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
19 meal periods, payment according to scheduled hours worked rather than actual hours worked,
20 and/or other off-the-clock work policies and practices described above) which results in a violation
21 of Labor Code section 226(a).

22 42. Based on information and belief, wage statements issued by DEFENDANTS failed
23 to list all applicable hourly rates in effect during the pay period and the corresponding number of
24 hours worked at each hourly rate by the employee, in violation of, including but not limited to,
25 Labor Code section 226(a)(9).

26 43. Moreover, based on information and belief, DEFENDANTS issued wage statements
27 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
28 other things, failing to list the correct name and/or address of the legal entity that is the employer,

1 in violation of Labor Code section 226(a)(8).

2 44. Based on information and belief, wage statements issued by DEFENDANTS failed
3 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

4 45. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did
5 not include all of the statutorily required information, including but not limited to, the correct name
6 and/or address of the legal entity that is the employer.

7 46. Based on further information and belief, DEFENDANTS issued wage statements to
8 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential
9 wages were paid in violation of Labor Code section 226.

10 47. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
11 Employees that were not accurate and did not include all of the statutorily required information. As
12 such, DEFENDANTS violated Labor Code section 226.

13 48. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
14 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
15 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
16 from Aggrieved Employees paychecks during the relevant period, including but not limited to,
17 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
18 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
19 damaged property. Such a practice is in violation of including but not limited to, Labor Code
20 Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

21 49. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
22 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
23 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
24 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
25 required by law, including but not limited to the following records: total daily hours worked,
26 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
27 began and ended each work period, time records of meal periods, and accurate itemized wage
28 statements.

1 50. DEFENDANTS have failed and continue to fail to keep accurate and complete
2 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
3 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
4 employer control during unpaid meal periods, failure to record the true start and end times of meal
5 periods, shift start times and shift end times, and other off-the-clock work policies and practices
6 described herein.

7 51. **Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432. *Time and Pay***
8 ***Records.*** Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that
9 employers keep the following information on file for each employee for a minimum of three years:
10 The employee's dates of employment; the employee's hourly rates and the corresponding number
11 of hours worked by the employee at each hourly rate, when the employee begins and ends each
12 work period (including meal periods) and split intervals; total hours worked by the employee; all
13 deductions; gross wages earned; and net wages earned.

14 52. Section (b) of Labor Code section 226 further requires employers to "afford current
15 and former employees the right to inspect or receive a copy of records pertaining to their
16 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
17 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
18 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
19 the request as soon as practicable, but no later than 21 calendar days from the date of the request.
20 A violation of this subdivision is an infraction." An employer's failure to comply within this
21 timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750)
22 penalty from the employer. Lab. Code section 226(f).

23 53. ***Personnel Records.*** In addition to their right to time and pay records, employees,
24 and their representatives, have the right to inspect and receive a copy of their personnel files
25 pursuant to Labor Code section 1198.5. This statute applies to both former and current employees.
26 Labor Code section 432 further specifies that employers must furnish copies of all employment
27 records bearing the employee's signature.

28 54. Labor Code section 1198.5 also requires that the file be made available for

1 inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days
2 from the date the employer receives a written request.” An employer’s failure to comply within this
3 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
4 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

5 55. Based on information and belief, DEFENDANTS failed to timely produce or make
6 available a current or former employee’s personnel records and/or payroll records when requested
7 pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example,
8 PLAINTIFF sent written requests for payroll and personnel records to DEFENDANTS. Yet,
9 DEFENDANTS failed to timely produce complete records within the time periods delineated by
10 California labor law. Based on information and belief, DEFENDANTS failed and continue to fail
11 to timely produce complete payroll and personnel records when requested by other Aggrieved
12 Employees.

13 56. These violations subject DEFENDANTS to penalties under Labor Code sections
14 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for
15 each Aggrieved Employee, results in a separate civil penalty.

16 57. **Failure to Provide Written Commission Agreements.** Labor Code section 2751
17 requires that all commission contracts "be in writing and . . . set forth the method by which the
18 commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the
19 statute, employers must also "give a signed copy of the contract to every employee who is a party
20 [to the contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section
21 2751(b).

22 58. Based on information and belief, DEFENDANTS failed to provide Aggrieved
23 Employees who were compensated on a commission basis with proper written commission
24 agreements, in violation of Labor Code section 2751.

25 59. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
26 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
27 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
28 employer to include on the wage statements for these employees the total hours of compensable

rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

60. Based on information and belief, DEFENDANTS failed to compensate Aggrieved Employees who were paid solely on a piece rate and/or commission basis separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, DEFENDANTS further failed to include this information on Aggrieved Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section 226.2.

61. **Unreimbursed Business Expenses.** Based on information and belief, DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses as a direct consequence of the performance of their job duties without providing reimbursement, in violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other Aggrieved Employees were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

62. Based on information and belief, DEFENDANTS shifted the costs of doing business onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses including but not limited to including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved Employees' personal cell phones/mobile devices, internet and/or data usage for work-related purposes, including but not limited to, to receive and respond to work-related messages and/or phone calls. For example, based on information and belief, Aggrieved Employees were required to receive and respond to work-

1 related calls and/or messages from supervisors and/or other employees regarding scheduling and/or
2 other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business
3 expenses.

4 63. Based on information and belief, Aggrieved Employees were not reimbursed for the
5 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform
6 their assigned job duties and/or for the costs of purchasing and/or maintaining work
7 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks). Based on
8 information and belief, at times, Aggrieved Employees were not reimbursed for the business use of
9 their personal vehicles, including mileage, wear and tear and/or cost of fuel when they were required
10 to drive around and/or between job sites, and/or otherwise use their personal vehicles in carrying
11 out the duties assigned by DEFENDANTS.

12 64. As such, DEFENDANTS failed to compensate Aggrieved Employees at the legally
13 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant
14 period. As explained above, based on information and belief, Aggrieved Employees were not
15 reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of
16 purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety
17 gear.

18 65. Based on information and belief, DEFENDANTS regularly failed to reimburse and
19 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
20 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
21 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
22 assigned by DEFENDANTS.

23 66. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
24 for all reasonable expenses associated with carrying out their duties required that Aggrieved
25 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code
26 section 2802.

27 67. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
28 provides as follows:

1 68. (A) Each workday an employee is required to report for work and does report, but
2 is not put to work or is furnished less than half said employee's usual or scheduled day's work, the
3 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
4 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be
5 less than the minimum wage. (B) If an employee is required to report for work a second time in any
6 one workday and is furnished less than two (2) hours of work on the second reporting said employee
7 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
8 minimum wage.

9 69. Aggrieved Employees were not paid reporting time wages in accordance with
10 California law, including but not limited to the applicable IWC Wage Order. For example, based
11 on information and belief, at times, Aggrieved Employees reported to work for a scheduled shift
12 but were sent home and/or were not put to work and were not paid all owed reporting time pay
13 wages in accordance with California law.

14 70. Based on information and belief, DEFENDANTS have a policy and practice of
15 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
16 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure
17 to pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and continues
18 to violate the applicable Wage Order, and the California Labor Code, including but not limited to
19 section 1198.

20 71. **Violation of California Day of Rest Law.** Under California law, every employee
21 in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause"
22 its employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor
23 Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

24 72. Based on information and belief, DEFENDANTS have and continue to have a
25 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
26 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
27 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
28 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in

violation of California law, including but not limited to Labor Code Section 551.

73. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to unpaid meal periods) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay rate calculation.

74. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief, DEFENDANTS failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement. Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick leave.

75. Based on information and belief, throughout the relevant time period, DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

76. Upon information and belief, DEFENDANTS failed and continue to fail to comply with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays

1 wages.

2 77. As such, DEFENDANTS have violated California's paid sick leave laws and
3 unlawfully retained and continue to retain paid sick leave that should have been paid and was not
4 as a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
5 unlawful practices and policies violate Labor Code sections 245-248.5.

6 78. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
7 that all employers with 26 or more employees are required to provide up to 80 hours for covered
8 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
9 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
10 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
11 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
12 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

13 79. **Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,
14 employees shall be provided with suitable seats when the nature of the work reasonably permits the
15 use of seats and when they are not actively engaged in the work duties that would not permit them
16 to be seated.

17 80. All applicable IWC Wage Orders, Section 14(A-B) provides:

18 (A) All working employees shall be provided with suitable seats when the nature of the
19 work reasonably permits the use of seats.

20 (B) When employees are not engaged in the active duties of their employment and the
21 nature of the work requires standing, an adequate number of suitable seats shall be placed in
22 reasonable proximity to the work area and employees shall be permitted to use such seats when it
23 does not interfere with the performance of their duties.

24 81. Suitable seating is one of the worker protections covered by California's Wage
25 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
26 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
27 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

28 82. Based on information and belief, DEFENDANTS failed to provide Aggrieved

1 Employees with suitable seating, and when such employees were not engaged in duties which
2 required them to stand, no seating was placed in reasonable proximity to their workstations.

3 83. Moreover, based on information and belief, the nature of the work reasonably
4 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
5 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties
6 of their employment, yet there were no suitable seats in reasonable proximity to the work area and
7 use of seats would not interfere with the performance of their duties.

8 84. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
9 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
10 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
11 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
12 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
13 limited to, shift differentials) to Aggrieved Employees upon separation of employment, in violation
14 of California law, including but not limited to, Labor Code section 227.3.

15 85. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
16 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
17 were due and owing upon termination or resignation. Based on information and belief,
18 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the
19 timing requirements of Labor Code sections 201-202.

20 86. Upon separation of employment, Aggrieved Employees' final paychecks were not
21 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
22 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
23 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
24 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
25 accrued rates.

26 87. Based on further information and belief, DEFENDANTS failed to timely provide
27 all owed wages immediately upon discharge of employment. Based in information and belief, at
28 times, Aggrieved Employees experienced breaks in employment caused by DEFENDANTS

1 whereby Aggrieved Employees would not be called in for work for longer than a single pay period
2 due to including but not limited to DEFENDANTS' lack of work or lack of assignments. Such
3 instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed
4 wages at the end of such periods of employment, in violation of including but not limited to Labor
5 Code section 201-202.

6 **88. Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
7 employee who is discharged shall be paid at the place of discharge, and every employee who quits
8 shall be paid at the office or agency of the employer in the county where the employee has been
9 performing labor. All payments shall be made in the manner provided by law.

10 **89.** Based on information and belief, DEFENDANTS have a policy and practice of
11 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
12 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
13 office or agency of DEFENDANTS in the county where the work was performed, in violation of
14 Labor Code Section 208.

15 **90. Unlawful Agreements-Unlawful Criminal History Inquiries.**

16 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

17 **91.** Based on information and belief, DEFENDANTS required Aggrieved Employees to
18 agree in writing to unlawful conditions of employment including but not limited to unlawful non-
19 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
20 unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law
21 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
22 and/or continuing employment in violation of Labor Code section 432.5.

23 **92.** Based on information and belief, DEFENDANTS ordered unlawful financial credit
24 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required
25 Aggrieved Employees to provide ongoing written consent to the unlawful credit checks as a
26 condition of employment, in violation of California and Federal law, which results in a further
27 violation of Labor Code section 432.5.

28 **93.** Based on information and belief, DEFENDANTS also required Aggrieved

1 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
2 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
3 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
4 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
5 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
6 FCRA when conducting background screenings for applicants, including but not limited to
7 Aggrieved Employees that were subject to a background check as a condition of employment during
8 the application phase.

9 94. Based on information and belief, DEFENDANTS required Aggrieved Employees to
10 agree in writing to a background check which failed to abide by the requirements set forth in CA
11 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
12 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
13 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
14 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
15 failing to provide a way by which the individual could request a copy of the report, failing to
16 disclose the name, address, and telephone number of the third party preparing the report, and failing
17 to properly obtain authorization or consent to such a background check, and thus was an unlawful
18 background check.

19 95. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
20 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
21 section 432.5.

22 96. Based on further information and belief, DEFENDANTS also required Aggrieved
23 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
24 background checks throughout the duration of employment, in violation of the ICRAA and/or
25 FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5,
26 by requiring applicants and employees to agree to an unlawful provision as a condition of
27 employment.

28 97. Based on further information and belief, DEFENDANTS knew that requiring

Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

98. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

99. Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in convictions on its employment application, in violation of California law.

100. Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law, and in violation of Labor code section 432.5.

Unlawful PAGA Waiver

101. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

102. An action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

103. Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative

1 action on behalf of the state.”)

2 104. Upon information and belief, DEFENDANTS required Aggrieved Employees to
3 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
4 requiring PLAINTIFF and other Aggrieved Employees to agree, in writing, to an unlawful PAGA
5 waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of
6 employment which is a violation of labor code section 432.5.

7 105. **Failure to Provide a Safe and Healthful Workplace.** During the relevant period,
8 DEFENDANTS have had a policy and practice of failing, within one business day after
9 DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to
10 COVID-19, to notify PLAINTIFF and other Aggrieved Employees who were on the premises at
11 the same worksite as the qualifying individual within the infectious period, and the employers of
12 subcontracted employees who were on the premises at the same worksite as the qualifying
13 individual within the infectious period and the exclusive representative, if any, of the cleaning and
14 disinfection plan that the employer is implementing per the guidelines of the COVID-19 prevention
15 program per the Cal-OSHA COVID-19 Emergency Temporary Standards, among other things in
16 violation of Labor Code sections 6409.6 and/or 6432.

17 106. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
18 engaged in these same herein described unlawful practices, which led to violations of the California
19 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
20 unlawful practices to all of its employees that it applied to PLAINTIFF.

21 **THE CALIFORNIA CLASS**

22 107. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
25 individuals who are or previously were employed by DEFENDANT in California, including any
26 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees
27 (the "CALIFORNIA CLASS") at any time during the period of December 24, 2021 to August 22,
28 2024 (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).

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

109. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT violated the California Labor Code. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

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

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

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

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

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

(c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy to the CALIFORNIA CLASS and

1 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS
2 sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and
3 the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the
4 same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

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

11 111. 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 separate actions by
15 individual members of the CALIFORNIA CLASS will create the risk of:

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

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

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

27 1) With respect to the First Cause of Action, the final relief on behalf of
28 the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this

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

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

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

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

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

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

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

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

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

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

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

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

17 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
18 able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

19 (e) There is a community of interest in obtaining appropriate legal and equitable
20 relief for the acts of unfair competition, statutory violations and other improprieties, and in
21 obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have
22 inflicted upon the CALIFORNIA CLASS;

23 (f) There is a community of interest in ensuring that the combined assets of
24 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS
25 for the injuries sustained;

26 (g) DEFENDANT has acted or refused to act on grounds generally applicable
27 to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to
28 the CALIFORNIA CLASS as a whole;

1 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
2 the business records of DEFENDANT; and,

3 (i) Class treatment provides manageable judicial treatment calculated to bring a
4 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
5 conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

11 114. PLAINTIFF further brings the Second through the Twenty-Second Causes of Action
12 on behalf of a CALIFORNIA CLASS at any time during the CALIFORNIA CLASS PERIOD
13 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
14 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

15 115. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 116. Common questions of law and fact exist as to members of the CALIFORNIA
18 CLASS.

19 117. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
20 law by, among other things:

21 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF
22 and the members of the CALIFORNIA CLASS all wages due for overtime worked, for which
23 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

24 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
25 accurately pay PLAINTIFF and the members of the CALIFORNIA CLASS the correct minimum
26 wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

27 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
28 members of the CALIFORNIA CLASS with an accurate itemized statement in writing showing the

1 corresponding correct amount of wages earned by the employee;

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

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

10 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
11 the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job
12 duties.

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

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

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

21 (c) The claims of the representative PLAINTIFF are typical of the claims of each
22 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the
23 CALIFORNIA CLASS, was a non-exempt employee paid on an hourly basis who was subjected to
24 the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the
25 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's
26 employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are
27 similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged
28 in by DEFENDANT; and,

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

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

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

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

15 2) Adjudication with respect to individual members of the
16 CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other
17 members not party to the adjudication or substantially impair or impede their ability to protect their
18 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 appropriate class-wide
21 relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT fails to pay all
22 wages due. Including the correct wages for all time worked by the members of the CALIFORNIA
23 CLASS as required by law;

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

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

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

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

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

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

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

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

26 (a) The questions of law and fact common to the CALIFORNIA CLASS
27 predominate over any question affecting only individual CALIFORNIA CLASS Members;

28 (b) A Class Action is superior to any other available method for the fair and

1 efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the
2 context of employment litigation a substantial number of individual CALIFORNIA CLASS
3 Members will avoid asserting their rights individually out of fear of retaliation or adverse impact
4 on their employment;

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

7 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
8 able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and equitable
10 relief for the acts of unfair competition, statutory violations and other improprieties, and in
11 obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have
12 inflicted upon the CALIFORNIA CLASS;

13 (f) There is a community of interest in ensuring that the combined assets of
14 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS
15 for the injuries sustained;

16 (g) DEFENDANT has acted or refused to act on grounds generally applicable
17 to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to
18 the CALIFORNIA CLASS as a whole;

19 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
20 the business records of DEFENDANT. The CALIFORNIA CLASS consists of all CALIFORNIA
21 CLASS Members who worked for DEFENDANT in California at any time during the
22 CALIFORNIA CLASS PERIOD; and,

23 (i) Class treatment provides manageable judicial treatment calculated to bring a
24 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
25 conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

26
27 **FIRST CAUSE OF ACTION**

28 **For Unlawful Business Practices**

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

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

3 121. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.
4 PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by
5 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

6 122. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
7 § 17021.

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

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

20 Cal. Bus. & Prof. Code § 17203.

21 124. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
22 in a business practice which violates California law, including but not limited to, the applicable
23 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 210, 212, 216, 218, 218.5, 221, 226, 226.2, 226.7, 227.3,
25 233, 234, 245-248.5, 248.6, 256, 510, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197,
26 1197.1, 1198, 1198.5, 1199, and 2802 and the Fair Labor Standards Act and federal regulations
27 promulgated thereunder, for which this Court should issue declaratory and other equitable relief
28 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
held to constitute unfair competition, including restitution of wages wrongfully withheld.

125. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or

1 substantially injurious to employees, and were without valid justification or utility for which this
2 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
3 Business & Professions Code, including restitution of wages wrongfully withheld.

4 126. By the conduct alleged herein, DEFENDANT's practices were deceptive and
5 fraudulent due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
6 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200,
7 *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
8 & Prof. Code § 17203, including restitution of wages wrongfully withheld.

9 127. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
10 and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other
11 members of the CALIFORNIA CLASS to be underpaid during their employment with
12 DEFENDANT.

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

17 129. Therefore, PLAINTIFFS demands on behalf of himself and on behalf of each
18 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
19 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
20 workday in which a second off-duty meal period was not timely provided for each ten (10) hours
21 of work.

22 130. PLAINTIFFS further demands on behalf of themselves and each member of the
23 CALIFORNIA CLASS, one (1) hour of pay for each workday in which an off duty paid rest period
24 was not timely provided as required by law.

25 131. By and through the unlawful and unfair business practices described herein,
26 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
27 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has
28 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment

1 of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly
2 compete against competitors who comply with the law.

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

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

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

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

24
25 **SECOND CAUSE OF ACTION**

26 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

24 143. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
26 by PLAINTIFFS and other members of the CALIFORNIA CLASS. DEFENDANT acted in an
27 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
28 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws

1 and regulations.

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

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

10
11 **THIRD CAUSE OF ACTION**

12 **For Failure To Pay Overtime Compensation**

13 **[Cal. Lab. Code § 510]**

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

15
16 146. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
17 incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

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

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

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

150. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,

1 including minimum wage and overtime compensation and interest thereon, together with the costs
2 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
3 than those fixed by the Industrial Welfare Commission is unlawful.

4 151. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and
5 CALIFORNIA CLASS Members were required, permitted or suffered by DEFENDANT to work
6 for DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

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

1 California.

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

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

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

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

22 159. In performing the acts and practices herein alleged in violation of California labor
23 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
24 worked and provide them with the requisite overtime compensation, DEFENDANT acted and
25 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
26 members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights,
27 or the consequences to them, and with the despicable intent of depriving them of their property and
28 legal rights, and otherwise causing them injury in order to increase company profits at the expense

1 of these employees.

2 160. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
3 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the
4 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
5 Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation
6 is determined to be owed to the CALIFORNIA CLASS Members who have terminated their
7 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore
8 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
9 penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's
10 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and
11 other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs. By virtue
12 of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFFS
13 and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFFS
14 and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an
15 economic injury in amounts which are presently unknown to them and which will be ascertained
16 according to proof at trial.

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

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

rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

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

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

166. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time

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

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

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

23
24 **FIFTH CAUSE OF ACTION**

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

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

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

28 169. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and

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

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

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

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

21
22 **SIXTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 226]**

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

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

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

3 (1) gross wages earned,

4 (2) total hours worked by the employee, except for any employee whose
5 compensation is solely based on a salary and who is exempt from payment of
6 overtime under subdivision (a) of Section 515 or any applicable order of the
7 Industrial Welfare Commission,

8 (3) the number of piece-rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis,

10 (4) all deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item,

12 (5) net wages earned,

13 (6) the inclusive dates of the period for which the employee is paid,

14 (7) the name of the employee and his or her social security number, except that by
15 January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown
17 on the itemized statement,

18 (8) the name and address of the legal entity that is the employer, and

19 (9) all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate by the employee.

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

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

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

22 23 **SEVENTH CAUSE OF ACTION**

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

25 **[Cal. Lab. Code § 2802]**

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

27 177. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
28 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

2 178. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

1 **EIGHTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 201, 202, 203, and 208]**

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

5 **and Against All Defendants)**

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

8 182. Cal. Lab. Code § 200 provides, in relevant part, that:

9 As used in this article:

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

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

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

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

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

28 185. There was no definite term in PLAINTIFFS's or any CALIFORNIA CLASS

Members' employment contract.

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

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

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

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

188. Additionally, Labor Code Section 208 provides: Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

189. Based on information and belief, DEFENDANT has a policy and practice of failing to provide Aggrieved Employees who are terminated with their final paychecks at the place of discharge and/or of failing to provide the CALIFORNIA CLASS Members with their final paychecks at the office or agency of DEFENDANT in the county where the work was performed, in violation of Labor Code Section 208.

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

NINTH CAUSE OF ACTION

For Failure to Pay Sick Pay Wages

1 [Cal. Lab. Code §§ 201-204, 210, 233, 246, *et seq.* and 248, *et seq.*]

2 (By PLAINTIFFS and the CALIFORNIA CLASS

3 and Against All Defendants)

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

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

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

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

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

1 196. DEFENDANTS further failed to give PLAINTIFFS and other CALIFORNIA
2 CLASS Members notice of their paid sick leave rights – or thereby putting their entitlement to sick
3 leave in a Labor Code section 2810.5 notice. In addition, DEFENDANT failed to maintain accurate
4 records of used sick leave and the balance of paid sick leave left to the employees, which affected
5 PLAINTIFFS and the CALIFORNIA CLASS Members’ intelligent exercise of their paid sick
6 leave.

7 197. But for this failure, PLAINTIFFS and other CALIFORNIA CLASS Members
8 would have used their paid sick leave at least prior to their respective separations, for as on several
9 occasions thereafter, he or she would have been entitled to use the banked sick leave and earn
10 appropriate compensation.

11 198. In violation of Labor Code section 247.5, DEFENDANT failed to maintain records
12 documenting the hours worked and paid sick days accrued and used by PLAINTIFFS and all
13 CALIFORNIA CLASS Members, permitting the presumption that PLAINTIFFS and all
14 CALIFORNIA CLASS Members were entitled to the maximum number of hours accruable.

15 199. Additionally, Labor Code § 248 *et seq.* provides that all employers with 26 or more
16 employees are required to provide up to 80 hours for covered employees to take COVID-19
17 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-
18 related. DEFENDANTS violated Labor Code § 248 *et seq.* by not providing PLAINTIFFS and
19 other CALIFORNIA CLASS Members with required COVID-19 Supplemental Paid Sick Leave,
20 by failing to provide employees with notice of their sick leave rights, by failing to provide
21 employees with appropriate notice of their sick leave use and/or accrued balance, and/or by failing
22 to pay Supplemental Paid Sick Leave at the appropriate rate of pay. Based on information and
23 belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in violation of Labor Code
24 section 248, *et seq.*

25 200. Such a pattern, practice, and uniform administration of corporate policy is unlawful
26 and entitles PLAINTIFFS and the other members of the CALIFORNIA CLASS to underpaid sick
27 pay wages, including interest thereon, applicable penalties, attorney’s fees, and costs of suit.

28 201. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,

1 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
2 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
3 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
4 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
5 and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful
6 and unfair business practices.

7 **TENTH CAUSE OF ACTION**

8 **For Failure to Keep Accurate Records**

9 **[Cal. Lab. Code §§ 1174, 1198, 1199)**

10 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against all Defendants)**

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

13 203. California Labor Code § 1174 requires employers to keep “accurate and complete”
14 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
15 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
16 times during which all owed meal periods were provided each day.

17 204. At all relevant times, DEFENDANT failed, and continue to fail, to keep accurate
18 and complete records as required by law, including but not limited to the following records: total
19 daily hours worked, applicable rates of pay, time records showing when PLAINTIFFS and other
20 CALIFORNIA CLASS Members began and ended each work period, time records of meal periods,
21 and accurate itemized wage statements.

22 205. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
23 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
24 applicable Wage Orders, section 7.

25
26 **ELEVENTH CAUSE OF ACTION**

27 **For Failure to Provide Time and Pay Records and Personnel Records**

28 **[Cal. Lab. Code §§ 226(b)-(c), 1198.5, and 432]**

1 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

4 207. Time and Pay Records. Labor Code section 226 and all applicable IWC Wage
5 Orders, section 7 require that employers keep the following information on file for each employee
6 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
7 and the corresponding number of hours worked by the employee at each hourly rate, when the
8 employee begins and ends each work period (including meal periods) and split intervals; total hours
9 worked by the employee; all deductions; gross wages earned; and net wages earned.

10 208. Section (b) of Labor Code section 226 further requires employers to "afford current
11 and former employees the right to inspect or receive a copy of records pertaining to their
12 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
13 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
14 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
15 the request as soon as practicable, but no later than 21 calendar days from the date of the request.
16 A violation of this subdivision is an infraction."

17 209. Personnel Records. In addition to their right to time and pay records, employees,
18 and their representatives, have the right to inspect and receive a copy of their personnel files
19 pursuant to Labor Code section 1198.5. This statute applies to both former and current employees.
20 Labor Code section 432 further specifies that employers must furnish copies of all employment
21 records bearing the employee's signature.

22 210. Labor Code section 1198.5 also requires that the file be made available for
23 inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
24 from the date the employer receives a written request." An employer's failure to comply within this
25 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
26 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

27 211. Based on information and belief, DEFENDANT failed to timely produce or make
28 available a current or former employee's personnel records and/or payroll records when requested

pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, Plaintiff Moore sent written requests for payroll and personnel records to DEFENDANT. Yet, DEFENDANT failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, DEFENDANT failed and continues to fail to timely produce complete payroll and personnel records when requested by other Aggrieved Employees.

212. These violations subject DEFENDANT to damages and penalties under Labor Code sections 226, 1198.5, and 2699.

TWELFTH CAUSE OF ACTION

For Failure to Provide Suitable Resting Facilities

[Cal. Lab. Code § 1198 and Section 13(B) of the Wage Orders]

By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants

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

214. Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

215. DEFENDANTS' locations/facilities are generally similar in layout and design, and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANT could have provided CALIFORNIA CLASS Members with a resting facility within DEFENDANT'S facilities/locations with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and other CALIFORNIA CLASS Members were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANT'S premises which are not designated or reserved for their rest, such as their personal vehicles.

1 216. DEFENDANT did not provide CALIFORNIA CLASS Members with suitable
2 resting facilities during their hours of work, particularly during meal and/or rest periods.

3 217. DEFENDANT’S failure to provide suitable resting facilities to CALIFORNIA
4 CLASS Members violated and continue to violate the applicable Wage Order, section 13(B) and
5 the California Labor Code, including but not limited to section 1198.

6
7 **THIRTEENTH CAUSE OF ACTION**

8 **For Failure to Provide Written Commission Agreements**

9 **[Cal. Lab. Code § 2751]**

10 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

13 219. Labor Code section 2751 requires that all commission contracts "be in writing and
14 . . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code
15 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract
16 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract
17 from each employee." *Id.* section 2751(b).

18 220. Based on information and belief, DEFENDANT failed to provide the
19 CALIFORNIA CLASS MEMBERS who were compensated on a commission basis with proper
20 written commission agreements, in violation of Labor Code section 2751.

21
22 **FOURTEENTH CAUSE OF ACTION**

23 **For Failure to Separately Compensate for Rest Periods and Nonproductive Time**

24 **[Cal. Lab. Code § 226.2]**

25 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

28 222. Labor Code section 226.2 requires an employer to pay employees compensated on

1 a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
2 piece-rate pay. This statute further requires an employer to include on the wage statements for these
3 employees the total hours of compensable rest and recovery period, the total hours for other non-
4 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
5 In addition, the statute requires that employees shall be compensated for rest and recovery periods
6 at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
7 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
8 periods and any premium compensation for overtime, by the total hours worked during the
9 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
10 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

11 223. Based on information and belief, DEFENDANT failed to compensate
12 CALIFORNIA CLASS Members who were paid solely on a piece rate and/or commission basis
13 separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the
14 correct rates. Based on information and belief, DEFENDANT further failed to include this
15 information on CALIFORNIA CLASS Members' wage statements. As such, DEFENDANTS
16 failed to comply with Labor Code section 226.2.

17
18 **FIFTEENTH CAUSE OF ACTION**

19 **For Statutory Wage Violations**

20 **[Cal. Lab. Code § 226.2]**

21 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

24 225. California Labor Code section 223 makes it unlawful for an employer to secretly
25 pay wages lower than required by statute while purporting to pay legal wages. As described above,
26 DEFENDANT willfully and systematically denied PLAINTIFFS and CALIFORNIA CLASS
27 Members of all earned minimum and overtime compensation for all hours worked which resulted
28 in the payment of less than statutorily required wages. DEFENDANT acted with the intent to

1 deprive them of statutory wages, including, but not limited to, minimum and overtime wages, to
2 which they were entitled to under California law. Thus, DEFENDANT paid PLAINTIFFS and
3 other CALIFORNIA CLASS Members lower wages than those they were entitled to while
4 purporting that PLAINTIFFS and other CALIFORNIA CLASS Members were properly paid.

5
6 **SIXTEENTH CAUSE OF ACTION**

7 **For Refusal to Make Payment**

8 **[Cal. Lab. Code § 216]**

9 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

12 227. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
13 and payable and/or the denial of the validity of any claim to wages due. DEFENDANT violated
14 and continues to violate this section by failing to pay PLAINTIFFS and the CALIFORNIA CLASS
15 members for all hours worked at the proper wage rate and by failing to pay an additional hour of
16 pay for each meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland*
17 *Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

18
19 **SEVENTEENTH CAUSE OF ACTION**

20 **For Unlawful Deductions**

21 **[Cal. Lab. Code § 221]**

22 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

25 229. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing]
26 from an employee any part of wages theretofore paid by said employer to said employee." Based
27 on information and belief DEFENDANT made unlawful deductions from CALIFORNIA CLASS
28 Members' paychecks during the relevant period. Such a practice is in violation of including but not

1 limited to, Labor Code Sections 221-222.

2
3 **EIGHTEENTH CAUSE OF ACTION**

4 **For Failure to Provide Reporting Time Pay**

5 **[Cal. Lab. Code § 1198 and the Applicable Wage Orders]**

6 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

9 231. Section 5 of all applicable IWC Wage Orders, provides as follows:

10 232. (A) Each workday an employee is required to report for work and does report, but
11 is not put to work or is furnished less than half said employee's usual or scheduled day's work, the
12 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
13 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be
14 less than the minimum wage.

15 233. (B) If an employee is required to report for work a second time in any one workday
16 and is furnished less than two (2) hours of work on the second reporting said employee shall be
17 paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum
18 wage.

19 234. The CALIFORNIA CLASS Members were not paid reporting time wages in
20 accordance with California law, including but not limited to the applicable IWC Wage Order. For
21 example, based on information and belief, at times, the CALIFORNIA CLASS Members reported
22 to work for a scheduled shift but were sent home and/or were not put to work and were not paid all
23 owed reporting time pay wages in accordance with California law.

24 235. Based on information and belief, DEFENDANT has a policy and practice of failing
25 to pay all reporting time wages to CALIFORNIA CLASS Members, in violation of California law,
26 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANT'S failure
27 to pay all reporting time wages to PLAINTIFFS and the CALIFORNIA CLASS Members violated
28 and continues to violate the applicable Wage Order, and the California Labor Code, including but

1 not limited to section 1198.

2
3 **NINETEENTH CAUSE OF ACTION**

4 **For Violation of California Day of Rest Law**

5 **[Cal. Lab. Code §§ 551 and 552]**

6 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

9 237. Under California law, every employee in California is "entitled" to "one day's rest
10 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days
11 in seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation
12 of the foregoing sections is a misdemeanor.

13 238. Based on information and belief, DEFENDANT has and continues to have a
14 uniform policy and practice of requiring the CALIFORNIA CLASS Members to work at least seven
15 days consecutively in a workweek, in violation of including but not limited to, Labor Code Section
16 551. Based on information and belief, PLAINTIFFS and/or other CALIFORNIA CLASS Members
17 were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek,
18 in violation of California law, including but not limited to Labor Code Section 551.

19
20 **TWENTIETH CAUSE OF ACTION**

21 **For Failure to Provide Suitable Seating**

22 **[IWC Wage Orders, Section 14(A-B)]**

23 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

26 240. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
27 provided with suitable seats when the nature of the work reasonably permits the use of seats and
28 when they are not actively engaged in the work duties that would not permit them to be seated.

1 [Cal. Labor Code § 227.3]

2 By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants

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

5 247. California Labor Code section 227.3 provides that when an employer policy
6 provides for paid vacations and/or paid time off, and an employee is terminated without having
7 taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as
8 wages at the employee's final rate in accordance with such contract of employment or employer
9 policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation
10 time or paid time off upon termination.

11 248. Based on information and belief, DEFENDANT had and continues to have a
12 uniform policy and practice of failing to allow CALIFORNIA CLASS Members to use their earned
13 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
14 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including
15 non-discretionary compensation, including but not limited to, shift differentials) to CALIFORNIA
16 CLASS Members upon separation of employment, in violation of California law, including but not
17 limited to, Labor Code section 227.3.

18
19 **TWENTY-SECOND CAUSE OF ACTION**

20 **For Unlawful Agreements/Unlawful Criminal History Inquiries**

21 **[Cal. Labor Code §§ 432.5, 432.7 and 1024.5]**

22 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

25 250. *Unlawful Agreements.* Labor Code section 432.5 provides that “no
26 employer...shall require any employee or applicant for employment to agree, in writing, to any
27 term or condition which is known by such employer...to be prohibited by law.” DEFENDANT
28 required and continues to require PLAINTIFFS and CALIFORNIA CLASS Members to agree in

1 writing to unlawful conditions of employment including but not limited to unlawful non-
2 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
3 unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law
4 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
5 and/or continuing employment in violation of Labor Code section 432.5.

6 251. The California Labor Code places certain procedural and substantive limits on an
7 employers' ability to conduct employee background checks and on how employers can use the
8 information they obtain through those background checks. Labor Code section 1024.5 states that
9 employers, except for financial institutions, may order a credit check only if the individual works
10 (or is applying to work) in certain positions (e.g., managerial positions, financially-related
11 positions, and certain government positions). Additionally, the Investigative Consumer Reporting
12 Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act
13 (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an
14 employee background check, including but not limited to identifying an appropriate reason for the
15 background check, a separate consent form with required disclosures and certain formatting
16 requirements, additional forms such as a summary of rights, a way by which to request a copy of
17 the report, as well as proper notice of adverse actions taken, among other statutory requirements.

18 252. Based on information and belief, DEFENDANT ordered unlawful financial credit
19 checks on the CALIFORNIA CLASS Members, in violation of Labor Code section 1024.5, and
20 required them to provide ongoing written consent to the unlawful credit checks as a condition of
21 employment, in violation of California and Federal law, which results in a violation of Labor Code
22 section 432.5.

23 253. Based on information and belief, DEFENDANT required the CALIFORNIA
24 CLASS Members to submit and/or agree to submit in writing to unlawful criminal background
25 checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the
26 FCRA as alleged above.

27 254. Based on further information and belief, DEFENDANT required the
28 CALIFORNIA CLASS Members to agree in writing to provide DEFENDANT with ongoing

1 consent to conduct background checks throughout the duration of employment, in violation of the
2 ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code
3 section 432.5, by requiring applicants and employees to agree to an unlawful provision as a
4 condition of employment.

5 255. Based on further information and belief, DEFENDANT knew that requiring the
6 CALIFORNIA CLASS Members to agree to unlawful criminal and/or financial background checks
7 as a condition of obtaining and/or holding employment was unlawful.

8 256. By requiring that the CALIFORNIA CLASS Members sign off on the illegal
9 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5.

10 257. Unlawful Inquiries into Criminal History. Labor Code section 432.7 prohibits an
11 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
12 then, certain limitations apply. Based on information and belief, DEFENDANT asked
13 CALIFORNIA CLASS Members about arrests not resulting in convictions on its employment
14 application, in violation of California law.

15 258. Upon information and belief, DEFENDANT, in violation of California law,
16 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
17 (“FEHA”), asked CALIFORNIA CLASS Members about convictions prior to extending an offer
18 of employment and/or otherwise impermissibly inquired into criminal history on its employment
19 application in violation of California law.

20 259. By asking about arrests not resulting in convictions, DEFENDANT violated Labor
21 Code section 432.7. By asking about convictions at the application phase or prior to extending an
22 employment offer, DEFENDANT violated California’s Fair Chance Act, and thereby violated
23 Labor Code section 432.5 by unlawfully requiring the CALIFORNIA CLASS Members to agree in
24 writing to disclose arrests and/or convictions as a condition of employment.

25
26 **TWENTY-THIRD CAUSE OF ACTION**

27 **For Failure to Pay Wages Timely During Employment**

28 **[Cal. Labor Code § 204]**

1 **By PLAINTIFFS and the CALIFORNIA CLASS and All Defendants**

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

4 261. During the CALIFORNIA CLASS PERIOD, Labor Code section 204 applied
5 to DEFENDANT’S employment of PLAINTIFFS and the CALIFORNIA CLASS. At all relevant
6 times, Labor Code section 204 provided that all wages earned by any employee, such as
7 PLAINTIFFS and members of the CALIFORNIA CLASS, in any employment between the 1st and
8 15th days, inclusive, of any calendar month, other than those wages due upon termination of an
9 employee, are due and payable between the 16th and 26th day of the month during which the work
10 was performed. Furthermore, at all times relevant hereto, Labor Code section 204 provided that all
11 wages earned by any employee, such as PLAINTIFFS and members of the CALIFORNIA CLASS,
12 in any employment between the 16th and the last day, inclusive, of any calendar month, other than
13 those wages due upon termination of an employee, are due and payable between the 1st and 10th
14 day of the following month.

15 262. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to pay
16 PLAINTIFF and members of the CALIFORNIA CLASS all of their entitled wages on a timely
17 basis.

18 263. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed to pay
19 PLAINTIFF and members of the CALIFORNIA CLASS for all wages earned, and therefore
20 violated Labor Code section 204. Accordingly, PLAINTIFF and members of the CALIFORNIA
21 CLASS are entitled to recover all damages, penalties, and other remedies available for violation of
22 Labor Code section 204.

23
24 **TWENTY-FOURTH CAUSE OF ACTION**

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

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

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

28 264. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth

1 herein, the prior paragraphs of this Complaint.

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

11 266. PLAINTIFFS, and such persons that may be added from time to time who satisfy
12 the requirements and exhaust the administrative procedures under the Private Attorney General Act,
13 brings this Representative Action on behalf of the State of California with respect to himself and
14 all individuals who are or previously were employed by DEFENDANT in California, and classified
15 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of March 15,
16 2022 to August 22, 2024 (the "PAGA PERIOD").

17 267. On March 15, 2023, Plaintiff Louis Noriega gave written notice by electronic mail
18 to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
19 employer of the specific provisions of this code alleged to have been violated as required by Labor
20 Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the
21 Complaint has expired. On July 19, 2023, Plaintiff Theresa Moore gave written notice by electronic
22 mail to the Agency and by certified mail to the employer of the specific provisions of this code
23 alleged to have been violated as required by Labor Code § 2699.3. As a result, pursuant to Section
24 2699.3, PLAINTIFFS may now commence a representative civil action under PAGA pursuant to
25 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES
26 as herein defined.

27 268. As set forth in the PAGA notices and described above, Defendant committed the
28 following violations and is liable for all corresponding civil penalties:

- a. Failure to provide accurate itemized wage statements;
- b. Failure to properly record and provide legally required meal periods and/or to provide meal period premiums at the appropriate rate of pay;
- c. Failure to properly record, authorize, and permit legally required rest periods, and/or to provide rest period premiums at the appropriate rate of pay;
- d. Failure to appropriately pay for all nonproductive time, rest, or recovery periods including failure to pay such time at the appropriate rate;
- e. Failure to keep all accurate and required time and payroll records;
- f. Failure to provide suitable seating and/or resting facilities;
- g. Failure to provide time and pay records and personnel records;
- h. Failure to pay minimum wages;
- i. Failure to pay overtime wages;
- j. Failure to pay reporting time pay, including failure to pay reporting time pay at the appropriate rate of pay;
- k. Failure to pay sick leave and supplemental sick leave, failure to provide notice of sick leave rights (including use and accrual), and failure to pay sick leave at the appropriate rate of pay;
- l. Failure to reimburse employees for required expenses;
- m. Failure to provide wages when due during employment;
- n. Failure to provide wages when due at termination;
- o. Failure to provide suitable seating;
- p. Failure to pay wages at the place of discharge or at another appropriate location pursuant to Labor Code section 208;
- q. Failure to provide a safe and healthful workplace, including by properly notifying employees of an exposure to COVID-19;
- r. Failure to provide written commission agreements;
- s. Failure to pay vested vacation and/or PTO, including failure to pay

vacation at employees' final rate of pay;

t. Unlawful agreements (including agreements regarding confidentiality, forum selection, choice of law, non-compete, nondisclosure, non-solicitation, release/waiver, PAGA waivers);

u. Unlawful deductions;

v. Violation of California's Day of Rest Law; and

w. Unlawful inquiries into criminal and/or financial histories.

269. Further, Plaintiffs contend that Defendant acted in violation of Labor Code sections 201-203, 204, 210, 212, 216, 218.5, 221-223, 225.5, 226, 226.2, 226.6, 226.7, 233-234, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2810.5, 2802, 2804, 2810.5 6400-6404, 6406-6407, 6409.6, 6432, 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), as well as all other sections of the California Labor Code set forth herein, and is thereby liable for civil penalties as a result of such conduct. PLAINTIFFS seek to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notices against Defendant pursuant to Labor Code section 2699, *et seq.* PLAINTIFFS hereby seek recovery of only 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 PLAINTIFFS and the AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS 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;

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

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

7 2. On behalf of the CALIFORNIA CLASS:

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

10 B) Compensatory damages, according to proof at trial, including compensatory
11 damages for minimum and overtime compensation due PLAINTIFFS and the other members of the
12 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest
13 thereon at the statutory rate;

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

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

20 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
21 1197;

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

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

27 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

28 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys

1 General Act of 2004

2 4. On all claims:

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

7

8

9

10 **DEMAND FOR A JURY TRIAL**

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

12

13 Dated: October 14, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

14 **CROSNER LEGAL, PC**

15

16 By: /s/Norman B. Blumenthal

17 Norman B. Blumenthal, Esq.

18 Jamie Serb, Esq.

19 Sepideh Ardestani, Esq.

20 Zachary M. Crosner, Esq.

21 Attorneys for Plaintiffs

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