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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

BEN THATCHER and RYAN HANSON,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

TRI-PACIFIC HEATING & AIR
CONDITIONING, L.P., a limited partnership;
ANDERSON AIR CONDITIONING, L.P., a
limited partnership; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 30-2023-01338208-CU-OE-CXC

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR A JURY TRIAL

1 Ben Thatcher and Ryan Hanson (“PLAINTIFFS”), as individuals, on behalf of
2 themselves and all other similarly situated current and former employees allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge,
4 the following.

5
6 **THE PARTIES**

7 1. Defendant Tri-Pacific Heating & Air Conditioning, L.P. is a limited partnership
8 that at all relevant times mentioned herein conducted and continues to conduct substantial
9 business in the state of California.

10 2. Defendant Anderson Air Conditioning, L.P. is a limited partnership that at all
11 relevant times mentioned herein conducted and continues to conduct substantial business in the
12 state of California.

13 3. Tri-Pacific Heating & Air Conditioning, L.P. and Anderson Air Conditioning,
14 L.P. were the joint employers of PLAINTIFF as evidenced by paycheck and by the company
15 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers
16 for the conduct alleged herein, and are therefore collectively referred to herein as
17 (“DEFENDANT”).

18 4. DEFENDANT owns and operates a heating and air conditioning company in
19 California.

20 5. Plaintiff Thatcher was employed by DEFENDANT in California from July 14,
21 2022 - February 8, 2023. Plaintiff Thatcher was at all times classified by DEFENDANT as a
22 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
23 periods and payment of minimum and overtime wages due for all time worked.

24 6. Plaintiff Hanson was employed by DEFENDANT in California from October 7,
25 2020 to February 2023. Plaintiff Hanson was at all times classified by DEFENDANT as a non-
26 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
27 periods and payment of minimum and overtime wages due for all time worked.

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

1 class, defined as all individuals who are or previously were employed by Tri-Pacific Heating
2 & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. in California, including any
3 employees staffed with Tri-Pacific Heating & Air Conditioning, L.P. and/or Anderson Air
4 Conditioning, L.P. by a third party, and classified as non-exempt employees (the
5 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
6 filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA
7 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
8 CLASS Members is under five million dollars (\$5,000,000.00).

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

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
22 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious
23 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
24 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
25 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
26 information and belief allege, that the Defendants named in this Complaint, including DOES
27 1 through 50, inclusive, are responsible in some manner for one or more of the events and
28 happenings that proximately caused the injuries and damages hereinafter alleged.

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

THE CONDUCT

11. 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 are 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

1 symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
2 timekeeping system for the workday. As a result, PLAINTIFFS and other CALIFORNIA
3 CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal
4 breaks by working without their time being correctly recorded and without compensation at
5 the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other
6 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
7 business records.

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

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

27 14. As a result of their rigorous work schedules, PLAINTIFFS and other
28 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute

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

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

1 back. Here, DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA
2 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
3 which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the
4 work premises during their rest period.

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

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

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

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

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

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

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

1 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA
2 CLASS Members at their base rates of pay.

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

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

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

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

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

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

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

24 27. In violation of the applicable sections of the California Labor Code and the
25 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
26 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
27 knowingly and systematically failed to provide PLAINTIFFS and the other Aggrieved
28

1 Employees suitable seating when the nature of these employees' work reasonably permitted
2 sitting.

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

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

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

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JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

33. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by Tri-Pacific Heating & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. in California, including any employees staffed with Tri-Pacific Heating & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. by a third party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 25 1) With respect to the First Cause of Action, the final relief on
26 behalf of the CALIFORNIA CLASS sought does not relate
27 exclusively to restitution because through this claim
28 PLAINTIFFS seek declaratory relief holding that the

1 DEFENDANT's policy and practices constitute unfair
2 competition, along with declaratory relief, injunctive relief, and
3 incidental equitable relief as may be necessary to prevent and
4 remedy the conduct declared to constitute unfair 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
7 California law as listed above, and predominate over any question
8 affecting only individual CALIFORNIA CLASS Members, and a Class
9 Action is superior to other available methods for the fair and efficient
10 adjudication of the controversy, including consideration of:

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

- 1 3) In the context of wage litigation because a substantial number of
2 individual CALIFORNIA CLASS Members will avoid asserting
3 their legal rights out of fear of retaliation by DEFENDANT,
4 which may adversely affect an individual's job with
5 DEFENDANT or with a subsequent employer, the Class Action
6 is the only means to assert their claims through a representative;
7 and,
8 4) A class action is superior to other available methods for the fair
9 and efficient adjudication of this litigation because class
10 treatment will obviate the need for unduly and unnecessary
11 duplicative litigation that is likely to result in the absence of
12 certification of this action pursuant to Cal. Code of Civ. Proc. §
13 382.

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

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

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

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

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THE CALIFORNIA LABOR SUB-CLASS

43. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed Tri-Pacific Heating & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. in California, including any employees staffed with Tri-Pacific Heating & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. by a third party, and classified as non exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

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

- LABOR SUB-CLASS the correct minimum wage pay for which
DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
 - (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
 - (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
 - (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the

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

(c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS.

PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,

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

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

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution

1 of separate actions by individual members of the CALIFORNIA
2 LABOR SUB-CLASS will create the risk of:

- 3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which
5 would establish incompatible standards of conduct for the
6 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
7 2) Adjudication with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS which would as a
9 practical matter be dispositive of interests of the other members
10 not party to the adjudication or substantially impair or impede
11 their ability to protect their interests.

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

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

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

1 individual actions will be avoided to recover the relatively small
2 amount of economic losses sustained by the individual
3 CALIFORNIA LABOR SUB-CLASS Members when compared
4 to the substantial expense and burden of individual prosecution
5 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 LABOR SUB-
10 CLASS, which would establish incompatible standards of
11 conduct for the DEFENDANT; and/or,

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

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

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

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

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

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

14
15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

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

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

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

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

24 54. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
25 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
26 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
27 competition as follows:
28

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

9 Cal. Bus. & Prof. Code § 17203.

10 55. By the conduct alleged herein, DEFENDANT has engaged and continues to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Industrial Wage Order(s), the California Code of Regulations and the California
13 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
14 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
15 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
16 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
17 held to constitute unfair competition, including restitution of wages wrongfully withheld.

18 56. By the conduct alleged herein, DEFENDANT's practices were unlawful and
19 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
20 unscrupulous or substantially injurious to employees, and were without valid justification or
21 utility for which this Court should issue equitable and injunctive relief pursuant to Section
22 17203 of the California Business & Professions Code, including restitution of wages
23 wrongfully withheld.

24 57. By the conduct alleged herein, DEFENDANT's practices were deceptive and
25 fraudulent in that DEFENDANT's policy and practice failed to provide the legally
26 mandated meal and rest periods, the required amount of compensation for missed meal and
27 rest periods and overtime and minimum wages owed, failed to timely pay wages, and failed
28 to reimburse all necessary business expenses incurred, and failed to provide Fair Labor
Standards Act overtime wages due for overtime worked as a result of failing to include non-
discretionary incentive compensation into their regular rates of pay for purposes of
computing the proper overtime pay due to a business practice that cannot be justified,

1 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
2 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
3 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
4 restitution of wages wrongfully withheld.

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

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

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

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

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

27 63. All the acts described herein as violations of, among other things, the
28 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the

1 California Labor Code, were unlawful and in violation of public policy, were immoral,
2 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
3 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
4 *seq.*

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

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

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

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1 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and
2 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
3 wage pay.

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

10 75. As a direct result of DEFENDANT's unlawful wage practices as alleged
11 herein, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
12 did not receive the correct minimum wage compensation for their time worked for
13 DEFENDANT.

14 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
15 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
16 Members to work without paying them for all the time they were under DEFENDANT's
17 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
19 that they were entitled to, constituting a failure to pay all earned wages.

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

26 78. DEFENDANT knew or should have known that PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
28 time worked. DEFENDANT elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
2 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
3 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
4 wages for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

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

20 89. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to the
22 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not
24 subject to a valid collective bargaining agreement that would preclude the causes of action
25 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of
26 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's
27 violations of non-negotiable, non-waiveable rights provided by the State of California.
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1 90. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS
2 and the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
3 overtime worked that they are entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

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

16
17 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

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

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

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

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

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1 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
2 and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
3 these expenses as an employer is required to do under the laws and regulations of California.

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

8
9 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

18 As used in this article:

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

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

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

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

30 If an employee not having a written contract for a definite period quits his
31 or her employment, his or her wages shall become due and payable not
32 later than 72 hours thereafter, unless the employee has given 72 hours
33 previous notice of his or her intention to quit, in which case the employee
34 is entitled to his or her wages at the time of quitting. Notwithstanding any

1 other provision of law, an employee who quits without providing a 72-
2 hour notice shall be entitled to receive payment by mail if he or she so
3 requests and designates a mailing address. The date of the mailing shall
constitute the date of payment for purposes of the requirement to provide
payment within 72 hours of the notice of quitting.

4 116. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
5 SUB-CLASS Members' employment contract.

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

7 If an employer willfully fails to pay, without abatement or reduction, in
8 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
9 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.

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

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

19 119. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
20 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
21 and who have not been fully paid their wages due to them, PLAINTIFFS demand thirty days
22 of pay as penalty for not paying all wages due at time of termination for all employees who
23 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
24 demands an accounting and payment of all wages due, plus interest and statutory costs as
25 allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

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

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

5 **and Against All Defendants)**

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

9 121. Cal Lab. Code § 233 provides that an employer must permit an employee to
10 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
11 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
12 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
13 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
14 right to sick pay wages, which an employer must calculate and compensate based on one of
15 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
16 same manner as the regular rate of pay for the workweek in which the employee uses paid
17 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
18 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
19 total wages, not including overtime premium pay, by the employee's total hours worked in
20 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
21 233, employees may sue to recover underpaid sick pay wages as damages.

22 122. As a matter of policy and practice, DEFENDANT pays sick pay wages to
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the
24 incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-
25 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
26 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
27 wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS
28 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-

1 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total hours
3 worked in the full pay periods of the prior 90 days of employment. As a result,
4 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
5 CALIFORNIA LABOR-SUB-CLASS.

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

24 124. As alleged herein and as a matter of policy and practice, DEFENDANT
25 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
26 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
27 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
28 among other Labor Code provisions. PLAINTIFFS are informed and believes that

1 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
2 mandates of the Labor Code as it relates to PLAINTIFFS' allegations, especially since the
3 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
4 include those benefits to which an employee is entitled as a part of his or her compensation,
5 including money, room, board, clothing, vacation pay, *and sick pay.*" *Murphy v. Kenneth*
6 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
7 willfully fails to timely pay PLAINTIFFS and the other members of the CALIFORNIA
8 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
9 penalties.

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

14
15 **TENTH CAUSE OF ACTION**

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

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

18 **(By Plaintiff Thatcher and Against All Defendants)**

19 126. Plaintiff Thatcher realleges and incorporates by this reference, as though fully
20 set forth herein, the prior paragraphs of this Complaint.

21 127. PAGA is a mechanism by which the State of California itself can enforce state
22 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
23 the state's labor law enforcement agencies. An action to recover civil penalties under
24 PAGA is fundamentally a law enforcement action designed to protect the public and not to
25 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
26 but to create a means of "deputizing" citizens as private attorneys general to enforce the
27 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
28 public interest to allow aggrieved employees, acting as private attorneys general to recover

1 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
2 claims cannot be subject to arbitration.

3 128. Plaintiff Thatcher, and such persons that may be added from time to time who
4 satisfy the requirements and exhaust the administrative procedures under the Private
5 Attorney General Act, brings this Representative Action on behalf of the State of California
6 with respect to himself and all individuals who are or previously were employed by Tri-
7 Pacific Heating & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. in
8 California, including any employees staffed with Tri-Pacific Heating & Air Conditioning,
9 L.P. and/or Anderson Air Conditioning, L.P. by a third party, and classified as non-exempt
10 employees ("AGGRIEVED EMPLOYEES") during the time period of April 25, 2022 until
11 a date as determined by the Court (the "PAGA PERIOD").

12 129. On April 25, 2023, Plaintiff Thatcher gave written notice by electronic mail to
13 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
14 employer of the specific provisions of this code alleged to have been violated as required by
15 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
16 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
17 PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to
18 Section 2699.3, Plaintiff Thatcher may now commence a representative civil action under
19 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
20 AGGRIEVED EMPLOYEES as herein defined.

21 130. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because DEFENDANT (a) failed to provide Plaintiff Thatcher and
23 the AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
24 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
25 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
26 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
27 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
28 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2),

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

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

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
16 severally, as follows:

17 1. On behalf of the CALIFORNIA CLASS:

- 18 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
19 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
20 B) An order temporarily, preliminarily and permanently enjoining and restraining
21 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
22 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
23 withheld from compensation due to PLAINTIFFS and the other members of the
24 CALIFORNIA CLASS; and,

25
26
27

¹Plaintiff Thatcher specifically exclude and/or do not allege any claims under California
28 Labor Code §558(a)(3).

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

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

5 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
6 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
7 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

13 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
14 in which a violation occurs and one hundred dollars (\$100) per each member of
15 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 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
23 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
24 plus interest, and costs of suit.; and,

25 G) The wages of all terminated employees in the CALIFORNIA LABOR
26 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
27 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
28

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

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

5 4. On all claims:

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

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

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

11

12 Dated: February 17, 2025

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

13

14

15

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

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Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

Dated: February 17, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

Attorneys for PLAINTIFFS

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Exhibit 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037

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

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

April 25, 2023
CA 2904

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Tri-Pacific Heating & Air Conditioning, L.P.
Certified Mail #70223330000181864279
CSC - LAWYERS INCORPORATING SERVICE
BECKY DEGEORGE
2710 GATEWAY OAKS DRIVE, Suite 150N
SACRAMENTO, CA95833

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Tri-Pacific Heating & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. in California and classified as non-exempt employees during the time period of April 25, 2022 until a date as determined by the Court. Our offices represent Plaintiff Ben Thatcher (“Plaintiff”) and other Aggrieved Employees in a lawsuit Tri-Pacific Heating & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. (“Defendant”). Plaintiff was employed from July 14, 2022 to February 8, 2023 by Defendant in California. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App.

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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LA JOLLA, CALIFORNIA 92037

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WRITERS EXT:
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April 25, 2023
CA 2904

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

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Certified Mail #70223330000181864262
CSC - LAWYERS INCORPORATING SERVICE
BECKY DEGEORGE
2710 GATEWAY OAKS DRIVE, Suite 150N
SACRAMENTO, CA95833

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Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Tri-Pacific Heating & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. in California and classified as non-exempt employees during the time period of April 25, 2022 until a date as determined by the Court. Our offices represent Plaintiff Ben Thatcher (“Plaintiff”) and other Aggrieved Employees in a lawsuit Tri-Pacific Heating & Air Conditioning, L.P. and/or Anderson Air Conditioning, L.P. (“Defendant”). Plaintiff was employed from July 14, 2022 to February 8, 2023 by Defendant in California. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App.

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Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.