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Assigned for All Purposes

Judge Lon F. Hurwitz

Dept. CX103

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

KARLA SILVA HUERTA, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

DOUBLETREE EMPLOYER LLC, a Limited
Liability Company; CURIO EMPLOYER LLC,
a Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 30-2023-01351270-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 246, 351,
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), and the
applicable Wage Order(s).

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1 Plaintiff Karla Silva Huerta (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants Doubletree Employer LLC and
8 Curio Employer LLC (referred to as “DEFENDANT”) seeking only to recover PAGA civil
9 penalties for herself, and on behalf of all current and former aggrieved employees that worked
10 for DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 **THE PARTIES**

24 4. Doubletree Employer LLC is a limited liability company that at all relevant times
25 mentioned herein conducted and continues to conduct substantial business in California.

26 5. Curio Employer LLC is a limited liability company that at all relevant times
27 mentioned herein conducted and continues to conduct substantial business in California.
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1 6. Doubletree Employer LLC and/or Curio Employer LLC were the joint employers
2 of PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work for
3 respectively, and are therefore jointly responsible as employers for the conduct alleged herein,
4 and are therefore collectively referred to herein as (“DEFENDANT”).

5 7. PLAINTIFF was employed by DEFENDANT in California from June of 2022 to
6 April 10, 2023. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt
7 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
8 payment of minimum and overtime wages due for all time worked.

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

17 9. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES
18 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
19 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
20 DEFENDANT’s violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
21 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
22 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
23 California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and
24 the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all
25 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
26 2699, *et seq.*
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10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11. 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 PLAINTIFF and all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES 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 PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal

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

16 13. State law provides that employees must be paid overtime and meal and rest
17 break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the
18 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
19 tied to specific elements of an employee’s performance.

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

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

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

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

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

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

27 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
28 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to

1 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
2 provides that every employer shall furnish each of his or her employees with an accurate
3 itemized wage statement in writing showing, among other things, gross wages earned and all
4 applicable hourly rates in effect during the pay period and the corresponding amount of time
5 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
6 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
7 during the pay period and the total hours worked, and the applicable pay period in which the
8 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
9 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
10 identify such information. More specifically, the wage statements failed to identify the
11 accurate total hours worked each pay period. When the hours shown on the wage statements
12 were added up, they did not equal the actual total hours worked during the pay period in
13 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
14 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
15 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
16 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
17 statements which violated Cal. Lab. Code § 226.

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

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

26 20. DEFENDANT from time to time failed to pay PLAINTIFF and the
27 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
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1 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Hourly” regular
2 wage payments.

3 21. DEFENDANT underpaid sick pay wages to PLAINTIFF and the
4 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
5 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
6 employees earn non-discretionary remuneration, including, but not limited to, incentives,
7 shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
8 DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at
9 their base rates of pay.

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

14 23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
15 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
16 earned non-discretionary incentive wages which increased their regular rate of pay.
17 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
18 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
19 required under Cal. Lab. Code Section 246.

20 24. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
21 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
22 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
23 believes and based thereon alleges that such failure to pay sick pay at regular rate was
24 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
25 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

26 25. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
27 to collect or receive from an employee any part of wages theretofore paid by said employer
28 to said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and

1 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
2 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
3 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
4 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
5 pay period and upon termination.

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

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

27 28. In violation of the applicable sections of the California Labor Code and the
28 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,

1 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
2 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
3 EMPLOYEES suitable seating when the nature of these employees' work reasonably
4 permitted sitting.

5 29. DEFENDANT knew or should have known that PLAINTIFF and other
6 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
7 when it did not interfere with the performance of their duties, and that DEFENDANT did
8 not provide suitable seating and/or did not allow them to sit when it did not interfere with
9 the performance of their duties.

10 30. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
11 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
12 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties
13 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.
14 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
15 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
16 California Labor Code and regulations promulgated thereunder as herein alleged.

17 31. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
18 terminated and DEFENDANT has not tendered payment of all wages owed as required by
19 law. Additionally, at all times during the term of PLAINTIFF's employment with
20 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued
21 vested vacation and holiday time on the date of their termination pursuant to
22 DEFENDANT's uniform vacation policies and applicable California law. The amount of
23 vacation pay PLAINTIFF and the other AGGRIEVED EMPLOYEES earned and
24 accumulated is evidenced by DEFENDANT's business records. Additionally,
25 DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFF and other
26 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay and
27 more specifically the final rate of pay that included all non-discretionary incentive
28 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT

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

19 DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
20 EMPLOYEES for all vested vacation and holiday time accumulated at employment
21 termination violated and continues to violate Section 227.3 of the California Labor Code.

22 32. During the PAGA PERIOD, pursuant to DEFENDANT's company policies
23 and practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were forced to forfeit
24 gratuities left for them by customers to DEFENDANT's agents who provided no service to
25 the customers that resulted in the gratuity. DEFENDANT routinely added anywhere from
26 18%-22% service charges to its food and beverage banquet bills. These service charges
27 were in the form of automatic charges which customers are required to pay, and which
28 reasonably appear to be gratuities for the service staff. It is typical and customary in the

1 hospitality industry that establishments impose gratuity charges in the range of 18%-22% of
2 the food and beverage bill. Thus, when customers have paid these charges, it is reasonable
3 for them to have believed they were gratuities to be paid to the service staff. Indeed,
4 because many of these charges are depicted to customers, and the custom in the food and
5 beverage industry that gratuities in the range of 18%-22% are paid for food and beverage
6 service, customers have paid these charges reasonably believing they were remitted to the
7 service staff. However, DEFENDANT has not remitted the total proceeds of these gratuities
8 to the non-managerial employees who serve the food and beverages. Instead,
9 DEFENDANT has a policy and practice of retaining for itself a portion of these gratuities
10 and/or using a portion of these gratuities to pay managers or other non-service employees.
11 As a result, PLAINTIFF and AGGRIEVED EMPLOYEES have not received the total
12 proceeds of the gratuities, to which they are entitled to under California law.

13 33. DEFENDANT is generally in the business of owning and operating hotels,
14 including the pubs and restaurants in the hotels. In addition, DEFENDANT also provides
15 banquet services to large groups, such as wedding parties and other banquet events. During
16 the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were in the
17 "chain of service" and earned gratuities based on their service for their customers. However,
18 PLAINTIFF and AGGRIEVED EMPLOYEES were forced to forfeit portions of their
19 gratuities, which said gratuities were kept by DEFENDANT and their agents who were not
20 in the chain of service from which the gratuity resulted. PLAINTIFF and other
21 AGGRIEVED EMPLOYEES contend that any gratuities kept by DEFENDANT were illegal
22 and in violation of California law because PLAINTIFF and other AGGRIEVED
23 EMPLOYEES, not DEFENDANT, provided the service for to whom the gratuity should
24 have been paid.

25 34. California Labor Code § 351 establishes the requirements for an employer
26 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
27 employees. California Labor Code § 351 expressly prohibits employers and their agents
28 from collecting, taking, or receiving any portion of a gratuity. California Labor Code §

1 350(e) defines the term "gratuity" as including any money that has been paid or given or left
2 for an employee by a patron of a business over and above the actual amount due the business
3 for services rendered or for goods, food, drink or articles sold or served to such patron.
4 Labor Code § 353 requires employers to keep accurate records of all gratuities they receive,
5 directly or indirectly.

6 35. Although tip pooling is not expressly prohibited by the Labor Code, employees
7 who mandate tip pooling must only distribute pooled tips to employees in the "chain of
8 service." By distributing tips to DEFENDANT directly and to their agents who were not in
9 the "chain of service," DEFENDANT has violated and continue to violate the legal
10 requirements for handling pooled tips and violated the holding in *O'Grady v. Merchant*
11 *Exchange Productions, Inc.*, No. A148513 (Court of Appeals of California, First District,
12 Division Two.)

13 36. All of the conduct and violations alleged herein occurred during the PAGA
14 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
15 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
16 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
17 2018 AJDAR 12157 (Certified for Publication 12/19/18).

18 **JURISDICTION AND VENUE**

19 37. This Court has jurisdiction over this Action pursuant to California Code of
20 Civil Procedure, Section 410.10.

21 38. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
23 employs AGGRIEVED EMPLOYEES across California, including in this County, and
24 committed the wrongful conduct herein alleged in this County against AGGRIEVED
25 EMPLOYEES.

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

5 43. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
7 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
8 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
9 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
10 required expenses, (f) failed to provide wages when due, (g) failed to provide suitable
11 seating, and (h) failed to provide gratuities, all in violation of the applicable Labor Code
12 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7,
13 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
14 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations,
15 Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s),
16 and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby
17 seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney
18 General Act of 2004 as the representative of the State of California for the illegal conduct
19 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

20
21 **PRAYER FOR RELIEF**

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

- 24 1. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:

26
27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 A) Recovery of civil penalties as prescribed by the Labor Code Private
2 Attorneys General Act of 2004; and,

3 B) An award of attorneys' fees and cost of suit, as allowable under the
4 law, including, but not limited to, pursuant to Labor Code §2699.

5 Dated: September 27, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
6 LLP

7
8 By: /s/ Nicholas De Blouw
9 _____
10 Norman B. Blumenthal
11 Kyle R. Nordrehaug
12 Nicholas J. De Blouw

13 **GOMEZ TRIAL ATTORNEYS, APLC**
14 John Gomez (State Bar #171485)
15 Emilia Arutunian (State Bar #305824)
16 655 Broadway, 17th Floor
17 San Diego, CA 92101

18 *Attorneys for Plaintiff*
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

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Phone: (858) 551-1223

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WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

May 8, 2023
CA2965

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Curio Employer LLC
Certified Mail #70223330000181864439
CSC - Lawyers Incorporating Service
BECKY DEGEORGE
2710 GATEWAY OAKS DRIVE, Suite 150N
SACRAMENTO, CA 95833

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 Curio Employer LLC and/or Doubletree Employer LLC in California, including any employees staffed with Curio Employer LLC and/or Doubletree Employer LLC by a third party, and classified as non-exempt employees during the time period of May 8, 2022 until a date as determined by the Court. Our offices represent Plaintiff Karla Silva Huerta (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Curio Employer LLC and/or Doubletree Employer LLC (“Defendant”). Plaintiff was employed by Defendant in California from June of 2022 to April 10, 2023. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. 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 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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May 8, 2023
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VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
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Certified Mail #70223330000181864446
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BECKY DEGEORGE
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SACRAMENTO, CA 95833

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Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Curio Employer LLC and/or Doubletree Employer LLC in California, including any employees staffed with Curio Employer LLC and/or Doubletree Employer LLC by a third party, and classified as non-exempt employees during the time period of May 8, 2022 until a date as determined by the Court. Our offices represent Plaintiff Karla Silva Huerta (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Curio Employer LLC and/or Doubletree Employer LLC (“Defendant”). Plaintiff was employed by Defendant in California from June of 2022 to April 10, 2023. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. 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 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Kyle R. Nordrehaug (State Bar #205975)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KARLA SILVA HUERTA, an individual, on behalf
of herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

DOUBLETREE EMPLOYER LLC, a Limited
Liability Company; CURIO EMPLOYER LLC, a
Limited Liability Company; and DOES 1 through
50, inclusive,

Defendants.

Case No. _____

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. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Doubletree Employer LLC is a limited liability company that at all relevant times
7 mentioned herein conducted and continues to conduct substantial business in California.

8 2. Curio Employer LLC is a limited liability company that at all relevant times
9 mentioned herein conducted and continues to conduct substantial business in California.

10 3. Doubletree Employer LLC and/or Curio Employer LLC were the joint employers
11 of PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work
12 for respectively, and are therefore jointly responsible as employers for the conduct alleged
13 herein, and are therefore collectively referred to herein as (“DEFENDANT”).

14 4. PLAINTIFF was employed by DEFENDANT in California from June of 2022
15 to April 10, 2023. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt
16 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
17 payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

25 26 **THE CONDUCT**

27 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
28 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time

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

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

27 11. The second component of PLAINTIFF's and other CALIFORNIA CLASS
28 Members' compensation is DEFENDANT's non-discretionary incentive program that paid

1 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
2 performance for DEFENDANT. The non-discretionary incentive program provided all
3 employees paid on an hourly basis with incentive compensation when the employees met the
4 various performance goals set by DEFENDANT. However, when calculating the regular
5 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
6 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
7 compensation as part of the employees' "regular rate of pay" for purposes of calculating
8 overtime pay and meal and rest break premium pay. Management and supervisors described
9 the incentive program to potential and new employees as part of the compensation package.
10 As a matter of law, the incentive compensation received by PLAINTIFF and other
11 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
12 to do so has resulted in a underpayment of overtime compensation and meal and rest break
13 premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

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

27 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required from time to time to work in excess of

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

20 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
21 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
22 actual amount of time these employees worked. Pursuant to the Industrial Welfare
23 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
24 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
25 employee was subject to the control of an employer, including all the time the employee was
26 permitted or suffered to permit this work. DEFENDANT required these employees to work
27 off the clock without paying them for all the time they were under DEFENDANT's control.
28 As such, DEFENDANT knew or should have known that PLAINTIFF and the other

1 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
2 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
3 working without their time being accurately recorded and without compensation at the
4 applicable minimum wage and overtime wage rates. To the extent that the time worked off
5 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
6 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
7 1197, and 1197.1.

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

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

5 in [I]n addition to, and entirely independent and apart from, any other penalty provided
6 this article, every person who fails to pay the wages of each employee as provided in
7 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
8 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.

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

13 18. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
14 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
15 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
16 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
17 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
18 Members at their base rates of pay.

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

23 20. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
24 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely
25 earned non-discretionary incentive wages which increased their regular rate of pay.
26 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
27 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of
28 pay, as required under Cal. Lab. Code Section 246.

1 21. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
2 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
3 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
4 informed and believes and based thereon alleges that such failure to pay sick pay at regular
5 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
6 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
7 Sections 201-203.

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

18 23. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
19 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
20 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct
21 consequence of discharging their duties on behalf of DEFENDANT. Under California
22 Labor Code Section 2802, employers are required to indemnify employees for all expenses
23 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
24 states that "an employer shall indemnify his or her employee for all necessary expenditures
25 or losses incurred by the employee in direct consequence of the discharge of his or her
26 duties, or of his or her obedience to the directions of the employer, even though unlawful,
27 unless the employee, at the time of obeying the directions, believed them to be unlawful."
28

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

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

18 26. DEFENDANT knew or should have known that PLAINTIFF and other
19 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
20 not interfere with the performance of their duties, and that DEFENDANT did not provide
21 suitable seating and/or did not allow them to sit when it did not interfere with the
22 performance of their duties.

23 27. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
24 Employees, DEFENDANT violated California Labor Code Section 1198 and California
25 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
26 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on
27 behalf of PLAINTIFF and other Aggrieved Employees as provided herein. Providing
28 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional

1 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
2 Code and regulations promulgated thereunder as herein alleged.

3 28. During the CALIFORNIA CLASS period, pursuant to DEFENDANT's
4 company policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members
5 were forced to forfeit gratuities left for them by customers to DEFENDANT's agents who
6 provided no service to the customers that resulted in the gratuity. DEFENDANT routinely
7 added anywhere from 18%-22% service charges to its food and beverage banquet bills.
8 These service charges were in the form of automatic charges which customers are required
9 to pay, and which reasonably appear to be gratuities for the service staff. It is typical and
10 customary in the hospitality industry that establishments impose gratuity charges in the
11 range of 18%-22% of the food and beverage bill. Thus, when customers have paid these
12 charges, it is reasonable for them to have believed they were gratuities to be paid to the
13 service staff. Indeed, because many of these charges are depicted to customers, and the
14 custom in the food and beverage industry that gratuities in the range of 18%-22% are paid
15 for food and beverage service, customers have paid these charges reasonably believing they
16 were remitted to the service staff. However, DEFENDANT has not remitted the total
17 proceeds of these gratuities to the non-managerial employees who serve the food and
18 beverages. Instead, DEFENDANT has a policy and practice of retaining for itself a portion
19 of these gratuities and/or using a portion of these gratuities to pay managers or other non-
20 service employees. As a result, PLAINTIFF and CALIFORNIA CLASS Members have not
21 received the total proceeds of the gratuities, to which they are entitled to under California
22 law.

23 29. DEFENDANT is generally in the business of owning and operating hotels,
24 including the pubs and restaurants in the hotels. In addition, DEFENDANT also provides
25 banquet services to large groups, such as wedding parties and other banquet events. During
26 the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
27 Members were in the "chain of service" and earned gratuities based on their service for their
28 customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to

1 forfeit portions of their gratuities, which said gratuities were kept by DEFENDANT and
2 their agents who were not in the chain of service from which the gratuity resulted.
3 PLAINTIFF and other CALIFORNIA CLASS Members contend that any gratuities kept by
4 DEFENDANT were illegal and in violation of California law because PLAINTIFF and other
5 CALIFORNIA CLASS Members, not DEFENDANT, provided the service for to whom the
6 gratuity should have been paid.

7 30. California Labor Code § 351 establishes the requirements for an employer
8 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
9 employees. California Labor Code § 351 expressly prohibits employers and their agents
10 from collecting, taking, or receiving any portion of a gratuity. California Labor Code §
11 350(e) defines the term “gratuity” as including any money that has been paid or given or left
12 for an employee by a patron of a business over and above the actual amount due the business
13 for services rendered or for goods, food, drink or articles sold or served to such patron.
14 Labor Code § 353 requires employers to keep accurate records of all gratuities they receive,
15 directly or indirectly.

16 31. Although tip pooling is not expressly prohibited by the Labor Code,
17 employees who mandate tip pooling must only distribute pooled tips to employees in the
18 “chain of service.” By distributing tips to DEFENDANT directly and to their agents who
19 were not in the “chain of service,” DEFENDANT has violated and continue to violate the
20 legal requirements for handling pooled tips and violated the holding in *O’Grady v. Merchant*
21 *Exchange Productions, Inc.*, No. A148513 (Court of Appeals of California, First District,
22 Division Two.)

23 32. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
24 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage
25 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due
26 to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-
27 duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
28 PLAINTIFF’s missed meal and rest breaks. The nature of the work performed by the

1 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties
2 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to
3 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's
4 business records. The amount in controversy for PLAINTIFF individually does not exceed
5 the sum or value of \$75,000.

6 **JURISDICTION AND VENUE**

7 33. This Court has jurisdiction over this Action pursuant to California Code of
8 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
9 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
10 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

17 **THE CALIFORNIA CLASS**

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

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

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

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

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

22 39. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
23 CLASS Members is impracticable.

24 40. DEFENDANT violated the rights of the CALIFORNIA CLASS under
25 California law by:

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

1 procedures that failed to record and pay PLAINTIFF and the other
2 members of the CALIFORNIA CLASS for all time worked, including
3 minimum wages owed and overtime wages owed for work performed
4 by these employees; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 B. Adjudications with respect to individual members of the
2 CALIFORNIA CLASS would as a practical matter be
3 dispositive of the interests of the other members not
4 parties to the adjudication or substantially impair or
5 impede their ability to protect their interests;

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

13 4) A class action is superior to other available methods for the fair
14 and efficient adjudication of this litigation because class
15 treatment will obviate the need for unduly and unnecessary
16 duplicative litigation that is likely to result in the absence of
17 certification of this action pursuant to Cal. Code of Civ. Proc. §
18 382.

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

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

25 (b) A Class Action is superior to any other available method for the fair
26 and efficient adjudication of the claims of the members of the
27 CALIFORNIA CLASS because in the context of employment litigation
28 a substantial number of individual CALIFORNIA CLASS Members

1 will avoid asserting their rights individually out of fear of retaliation or
2 adverse impact on their employment;

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

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

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

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

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

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

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

27 44. DEFENDANT maintains records from which the Court can ascertain and
28 identify by job title each of DEFENDANT's employees who have been intentionally

1 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
2 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
3 similarly situated employees when they have been identified.

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7 **THE CALIFORNIA LABOR SUB-CLASS**

8 45. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
9 Eighth, Ninth and Tenth causes Action on behalf of a California sub-class, defined as all
10 members of the CALIFORNIA CLASS who are or previously were employed by
11 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
12 party, and classified as non exempt employees (the "CALIFORNIA LABOR SUB-
13 CLASS") at any time during the period three (3) years prior to the filing of the complaint
14 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-
15 CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
16 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five
17 million dollars (\$5,000,000.00).

18 46. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
19 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
20 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
21 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
23 these employees, even though DEFENDANT enjoyed the benefit of this work, required
24 employees to perform this work and permitted or suffered to permit this work.
25 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
26 which these employees are entitled in order to unfairly cheat the competition and unlawfully
27 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
28

1 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
2 should be adjusted accordingly.

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

8 48. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

25 50. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
26 CLASS under California law by:

- 27 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
28 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-

1 CLASS all wages due for overtime worked, for which DEFENDANT is
2 liable pursuant to Cal. Lab. Code § 1194;

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

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

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

15 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
16 when an employee is discharged or quits from employment, the
17 employer must pay the employee all wages due without abatement, by
18 failing to tender full payment and/or restitution of wages owed or in the
19 manner required by California law to the members of the
20 CALIFORNIA LABOR SUB-CLASS who have terminated their
21 employment; and,

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

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

27 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
28 are so numerous that the joinder of all CALIFORNIA LABOR SUB-

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

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

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

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

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

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution
3 of separate actions by individual members of the CALIFORNIA
4 LABOR SUB-CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which
7 would establish incompatible standards of conduct for the
8 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
9 2) Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a
11 practical matter be dispositive of interests of the other members
12 not party to the adjudication or substantially impair or impede
13 their ability to protect their interests.
- 14 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
15 acted or refused to act on grounds generally applicable to the
16 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
17 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
18 whole in that DEFENDANT fails to pay all wages due. Including the
19 correct wages for all time worked by the members of the
20 CALIFORNIA LABOR SUB-CLASS as required by law;
- 21 (c) Common questions of law and fact predominate as to the members of
22 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
23 and violations of California Law as listed above, and predominate over
24 any question affecting only individual CALIFORNIA LABOR SUB-
25 CLASS Members, and a Class Action is superior to other available
26 methods for the fair and efficient adjudication of the controversy,
27 including consideration of:
28

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class

1 treatment will obviate the need for unduly and unnecessary
2 duplicative litigation that is likely to result in the absence of
3 certification of this action pursuant to Cal. Code of Civ. Proc. §
4 382.

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

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

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

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

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

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

25 55. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
26 Code § 17021.

27 56. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

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

11 Cal. Bus. & Prof. Code § 17203.

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

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

26 59. By the conduct alleged herein, DEFENDANT's practices were deceptive and
27 fraudulent in that DEFENDANT's policy and practice failed to provide the legally
28 mandated meal and rest periods, the required amount of compensation for missed meal and
rest periods and overtime and minimum wages owed, failed to timely pay wages, and failed
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-

1 discretionary incentive compensation into their regular rates of pay for purposes of
2 computing the proper overtime pay due to a business practice that cannot be justified,
3 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
4 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
5 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
6 restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

23
24 **SECOND CAUSE OF ACTION**

25 **For Failure To Pay Minimum Wages**

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

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

28 **and Against All Defendants)**

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

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

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

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

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

17 74. DEFENDANT maintained a wage practice of paying PLAINTIFF and the
18 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
19 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
20 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS.

22 75. DEFENDANT's unlawful wage and hour practices manifested, without
23 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
24 implementing a policy and practice that denies accurate compensation to PLAINTIFF and
25 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
26 wage pay.

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

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

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

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

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

21 80. DEFENDANT knew or should have known that PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
23 time worked. DEFENDANT elected, either through intentional malfeasance or gross
24 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
25 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
27 wages for their time worked.
28

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

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

21
22 **THIRD CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

24 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

25 89. DEFENDANT's unlawful wage and hour practices manifested, without
26 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
27 implementing a policy and practice that failed to accurately record overtime worked by
28 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate

1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
3 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
4 workweek.

5 90. In committing these violations of the California Labor Code, DEFENDANT
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
7 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
8 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
9 violation of the California Labor Code, the Industrial Welfare Commission requirements and
10 other applicable laws and regulations. As a direct result of DEFENDANT's unlawful wage
11 practices as alleged herein, the PLAINTIFF and the other members of the CALIFORNIA
12 LABOR SUB-CLASS did not receive full compensation for overtime worked.

13 91. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
14 from the overtime requirements of the law. None of these exemptions are applicable to the
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
16 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
17 subject to a valid collective bargaining agreement that would preclude the causes of action
18 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of
19 herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
20 of non-negotiable, non-waiveable rights provided by the State of California.

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

24 93. DEFENDANT failed to accurately pay the PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
26 worked which was in excess of the maximum hours permissible by law as required by Cal.
27 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the
28 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime

1 as to which DEFENDANT failed to accurately record and pay as evidenced by
2 DEFENDANT's business records and witnessed by employees.

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

9 95. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
11 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
13 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
14 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

24 97. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS therefore request recovery of all overtime wages, according to proof, interest,
26 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
27 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
28 extent minimum and/or overtime compensation is determined to be owed to the

1 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
2 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
3 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
4 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
5 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
6 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
7 are entitled to seek and recover statutory costs.

8
9 **FOURTH CAUSE OF ACTION**

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

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

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

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

17 99. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
18 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
19 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
20 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
21 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
22 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
23 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
24 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
25 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
26 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
27 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
28 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a

1 second off-duty meal period in some workdays in which these employees were required by
2 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
3 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
4 breaks without additional compensation and in accordance with DEFENDANT's strict
5 corporate policy and practice.

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

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

15 ///

16 **FIFTH CAUSE OF ACTION**

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

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

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

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

24 103. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
25 from time to time required to work in excess of four (4) hours without being provided ten
26 (10) minute rest periods. Further, these employees from time to time were denied their first
27 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
28 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of

1 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
2 (10) minutes for some shifts worked of ten (10) hours or more from time to time.
3 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
4 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
5 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
6 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

16 **SIXTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 226]**

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

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

24 107. Cal. Labor Code § 226 provides that an employer must furnish employees
25 with
26 an "accurate itemized" statement in writing showing:

- 27 (1) gross wages earned,
28 (2) total hours worked by the employee, except for any employee whose
compensation is solely based on a salary and who is exempt from payment of

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

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

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

13
14 **SEVENTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 2802]**

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

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

22 111. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

21 **EIGHTH CAUSE OF ACTION**

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

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

24 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
25 **and Against All Defendants)**
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1 114. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
2 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
3 paragraphs of this Complaint.

4 115. Cal. Lab. Code § 200 provides, in relevant part, that:

5 As used in this article:

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

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

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

12 117. Cal. Lab. Code § 202 provides, in relevant part, that:

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

18 118. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
19 SUB-CLASS Members' employment contract.

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

21 If an employer willfully fails to pay, without abatement or reduction, in
22 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
employee who is discharged or who quits, the wages of the employee shall
23 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
24 for more than 30 days.

25 120. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
26 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
27 owed as required by law. Additionally, at all times during the term of PLAINTIFF's
28 employment with DEFENDANT, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS

1 Members earned and accrued vested vacation and holiday time on the date of their
2 termination pursuant to DEFENDANT's uniform vacation policies and applicable California
3 law. The amount of vacation pay PLAINTIFF and the other CALIFORNIA LABOR SUB-
4 CLASS Members earned and accumulated is evidenced by DEFENDANT's business
5 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
6 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay
7 such wages at the regular rate of pay and more specifically the final rate of pay that included
8 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
9 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFF and other
10 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of
11 including all of PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-
12 discretionary incentive compensation into the vacation wage payment calculations.
13 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
14 PLAINTIFF and other CALIFORNIA LABOR CLASS Members would be paid vacation
15 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
16 practice, policy and procedure to deny paying the PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
18 DEFENDANT failed to pay the PLAINTIFF and the members of the CALIFORNIA
19 LABOR SUB-CLASS all vested vacation time as wages due upon employment termination,
20 in violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
21 DEFENDANT underpaid waiting time penalties to PLAINTIFF and other CALIFORNIA
22 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
23 PLAINTIFF's' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
24 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
25 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to
26 provide compensation for earned, accrued and vested vacation and holiday time, as well as
27 the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
28 unlawful, unfair and deceptive practice to the detriment of the PLAINTIFF and the members

1 of the CALIFORNIA LABOR SUB-CLASS . DEFENDANT's uniform practice and policy
2 of failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday
3 time accumulated at employment termination violated and continues to violate Section 227.3
4 of the California Labor Code.

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

12 **NINTH CAUSE OF ACTION**

13 **For Failure to Pay Sick Pay Wages**

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

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

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

20 122. Cal Lab. Code § 233 provides that an employer must permit an employee to
21 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
22 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
23 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
24 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
25 right to sick pay wages, which an employer must calculate and compensate based on one of
26 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
27 same manner as the regular rate of pay for the workweek in which the employee uses paid
28

1 sick time, whether or not the employee actually works overtime in that workweek,” or (ii)
2 “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s
3 total wages, not including overtime premium pay, by the employee’s total hours worked in
4 the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218 and
5 233, employees may sue to recover underpaid sick pay wages as damages.

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

18 124. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
19 during each calendar month and are to be paid no later than the payday for the next regular
20 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
21 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
22 no later than the payday for the next regular payroll period after accrued sick leave is used
23 as paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges
24 an employee, wages earned and unpaid at the time of discharge are due and payable
25 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
26 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
27 the employee has given 72-hour notice of his or her intention to quit, in which case the
28 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes

1 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
2 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
3 wages of the employee shall continue as a penalty from the due date, and at the same rate
4 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
5 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
6 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
7 sue to recover applicable penalties.

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

22 126. Such a pattern, practice, and uniform administration of corporate policy is
23 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
24 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
25 attorney's fees, and costs of suit.

26 **TENTH CAUSE OF ACTION**

27 **For Failure To Pay Statutory Gratuities**

28 **[Cal. Lab. Code §§ 351, *et seq.*]**

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS; and,
4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
9 Ninth and Tenth Causes of Action asserted by the CALIFORNIA LABOR SUB-
10 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
11 B) Compensatory damages, according to proof at trial, including compensatory
12 damages for minimum and overtime compensation due PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
14 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
15 statutory rate;
16 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
17 in which a violation occurs and one hundred dollars (\$100) per each member of
18 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
19 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
20 an award of costs for violation of Cal. Lab. Code § 226;
21 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
22 the applicable IWC Wage Order;
23 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
24 1197;
25 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
26 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
27 costs of suit.; and,
28

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

4 3. On all claims:

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

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

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

10 Dated: May 5, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

13 By: _____

14 Norman B. Blumenthal
Nicholas J. De Blouw

15 *Attorneys for Plaintiff*

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DEMAND FOR A JURY TRIAL

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

Dated: May 5, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff