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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

LISA HARPER, an individual, on behalf of herself
and on behalf of all persons similarly situated,

Plaintiff,

vs.

CW GOVERNMENT TRAVEL, INC., a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. BCV-23-102216

**FIRST AMENDED CLASS AND
REPRESENTATIVE 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. CIVIL PENALTIES PURSUANT TO LABOR
CODE § 2699, *et seq.* FOR VIOLATION OF
LABOR CODES §§ 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 REGULATION
TITLE 8, SECTION 1 1070(14) (FAILURE TO
PROVIDE SEATING), AND THE APPLICABLE
WAGE ORDER(S).

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. CW Government Travel, Inc. ("DEFENDANT") is a Corporation that at all relevant times mentioned
7 herein conducted and continues to conduct substantial business in California.

8 2. DEFENDANT provides travel services for U.S. military and civilian government agencies.

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

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

19 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS in order
20 to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS
21 PERIOD caused by DEFENDANT's policy and practice which failed to lawfully compensate these employees.
22 DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive business practice
23 whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of the
24 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
25 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members
26 of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful
27 conduct, and all other appropriate legal and equitable relief.
28

6. 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.

7. 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 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members 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 break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid for actual

1 recorded time rather than “rounded” time. Additionally, DEFENDANT engages in the practice of requiring
2 PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clocking that DEFENDANT, as a
3 condition of employment, required these employees to submit to mandatory temperature checks and symptom
4 questionnaires for COVID-19 screening prior to clocking into DEFENDANT’s timekeeping system for the
5 workday. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime
6 wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without
7 compensation at the applicable rates. DEFENDANT’s policy and practice not to pay PLAINTIFF and other
8 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT’s business records.

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

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

26 11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS
27 Members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully
28 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were required

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

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

25 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay
26 PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees worked.
27 Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF
28 and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was

1 subject to the control of an employer, including all the time the employee was permitted or suffered to permit this
2 work. DEFENDANT required these employees to work off the clock without paying them for all the time they
3 were under DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFF and
4 the other members of the CALIFORNIA CLASS were under compensated for all time worked. As a result,
5 PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by working without their time
6 being accurately recorded and without compensation at the applicable minimum wage and overtime wage rates.
7 To the extent that the time worked off the clock does not qualify for overtime premium payment, DEFENDANT
8 fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
9 1197.1.

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

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

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

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

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

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

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

22 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other members
23 of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties pursuant to Cal.
24 Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based thereon alleges that such failure
25 to pay sick pay at regular rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS
26 whose employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-
27 203.

28 21. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer to collect or
receive from an employee any part of wages theretofore paid by said employer to said employee.” DEFENDANT
failed to pay all compensation due to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members,

1 made unlawful deductions from compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
2 Members, failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF and
3 CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at each
4 applicable pay period and upon termination. PLAINTIFF and members of the CALIFORNIA LABOR SUB-
5 CLASS seek recovery of all illegal deductions from wages according to proof, related penalties, interest, attorney
6 fees and costs.

7 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify PLAINTIFF and
8 the other CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFF and other
9 CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANT.
10 Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses
11 incurred in the course 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 employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
14 even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

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

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

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

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

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

JURISDICTION AND VENUE

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

29. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in

1 this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the
2 CALIFORNIA CLASS.

3
4 **THE CALIFORNIA CLASS**

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

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

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

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

1 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS Members
2 is impracticable.

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

- 4 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code §§
5 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in place
6 company policies, practices and procedures that failed to record and pay PLAINTIFF
7 and the other members of the CALIFORNIA CLASS for all time worked, including
8 minimum wages owed and overtime wages owed for work performed by these
9 employees; and,
10 (b) Committing an act of unfair competition in violation of the UCL, by failing to provide
11 the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally
12 required meal and rest periods.

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

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

1 were and are similarly or identically harmed by the same unlawful, deceptive and unfair
2 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

25 3) In the context of wage litigation because a substantial number of individual
26 CALIFORNIA CLASS Members will avoid asserting their legal rights out of
27 fear of retaliation by DEFENDANT, which may adversely affect an
28

1 individual's job with DEFENDANT or with a subsequent employer, the Class
2 Action is the only means to assert their claims through a representative; and,

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

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

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

- 1 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect
3 to the CALIFORNIA CLASS as a whole;
- 4 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business
5 records of DEFENDANT; and,
- 6 (i) Class treatment provides manageable judicial treatment calculated to bring a efficient
7 and rapid conclusion to all litigation of all wage and hour related claims arising out of
8 the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

13
14 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly
2 cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
3 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
4 should be adjusted accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

- 19 (a) Without class certification and determination of declaratory, injunctive, statutory and
20 other legal questions within the class format, prosecution of separate actions by
21 individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
- 22 1) Inconsistent or varying adjudications with respect to individual members of the
23 CALIFORNIA LABOR SUB-CLASS which would establish incompatible
24 standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-
25 CLASS; or,
 - 26 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
27 SUB-CLASS which would as a practical matter be dispositive of interests of
28

the other members not party to the adjudication or substantially impair or
impede their ability to protect their interests.

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

(c) Common questions of law and fact predominate as to the members of the
CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of
California Law as listed above, and predominate over any question affecting only
individual CALIFORNIA LABOR SUB-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 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 treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

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

22
23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

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

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

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

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

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

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

9 Cal. Bus. & Prof. Code § 17203.

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

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

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

Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

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

25 **and Against All Defendants)**

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

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

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

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

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

12 69. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members of the
13 CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth
14 herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely payment of wages
15 due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

16 70. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to
17 the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that denies
18 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in
19 regards to minimum wage pay.

20 71. In committing these violations of the California Labor Code, DEFENDANT inaccurately
21 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF and other
22 members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
23 payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
24 Commission requirements and other applicable laws and regulations.

25 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the correct minimum wage
27 compensation for their time worked for DEFENDANT.
28

1 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required, permitted
2 or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without paying them for all
3 the time they were under DEFENDANT's control. During the CALIFORNIA LABOR SUB-CLASS PERIOD,
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
5 that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

24 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore
25 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any
26 statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other
27 applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA
28 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates

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

6 **THIRD CAUSE OF ACTION**

7 **For Failure To Pay Overtime Compensation**

8 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

27 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
28

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

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

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

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

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

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

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work, and did
2 in fact work, overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
3 DEFENDANT's business records and witnessed by employees.

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

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

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

21 92. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore
22 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the assessment of
23 any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other
24 applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the
25 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
26 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
27 waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
28 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,

1 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
2 are entitled to seek and recover statutory costs.

3
4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

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1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

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

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

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

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

17
18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 2802]**

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

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

24
25 106. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

20
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)**

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

28 110. Cal. Lab. Code § 200 provides, in relevant part, that:

As used in this article:

(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.

(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 demanding payment.

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

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

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

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

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

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

115. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law. Additionally, at all times during the term of PLAINTIFF's employment with DEFENDANT, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members earned and accrued vested vacation and holiday time on the date of their termination pursuant to DEFENDANT's uniform vacation policies and applicable California law. The amount of vacation pay PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members earned and accumulated is evidenced by DEFENDANT's business records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay such wages at the regular rate of pay and more specifically the final rate of pay that included all non-discretionary incentive compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT underpaid

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

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

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1 **NINTH CAUSE OF ACTION**

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

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

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

5 **and Against All Defendants)**

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

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

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

1 days of employment. As a result, DEFENDANT underpaid sick pay wages to PLAINTIFF and the other
2 members of the CALIFORNIA LABOR-SUB-CLASS.

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

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

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

TENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

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

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

126. On June 8, 2023, PLAINTIFF gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein (*PAGA Notice only without draft complaint*). The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,

1 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
2 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
3 EMPLOYEES as herein defined.

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

17 128. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the
18 extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA
19 PERIOD, PLAINTIFF seeks penalties for those violations that affected the AGGRIEVED EMPLOYEES
20 pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018).

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26 **PRAYER FOR RELIEF**

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

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

3 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR
2 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
3 G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a
4 penalty from the due date thereof at the same rate until paid or until an action therefore is
5 commenced, in accordance with Cal. Lab. Code § 203.
- 6 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 7 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of
8 2004; and,
9 B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not
10 limited to, pursuant to Labor Code §2699.
- 11 4. On all claims:
- 12 A) An award of interest, including prejudgment interest at the legal rate;
13 B) Such other and further relief as the Court deems just and equitable; and,
14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including,
15 but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

16 Dated: April 17, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

17
18
19 By: /s/ Nicholas J. De Blouw

Norman B. Blumenthal
Nicholas J. De Blouw

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21 *Attorneys for Plaintiff*
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EXHIBIT 1

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1004

June 8, 2023

CA2987

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

CW Government Travel, Inc.

Certified Mail #95890710520183824

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 CW Government Travel, Inc. in California, including any employees staffed with CW Government Travel, Inc. by a third party, and classified as non-exempt employees during the time period of June 8, 2022 until a date as determined by the Court. Our offices represent Plaintiff Lisa Harper (“Plaintiff”) and other Aggrieved Employees in a lawsuit against CW Government Travel, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from May of 2022 to May of 2023. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. 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 Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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