

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiffs

Assigned for All Purposes:

Judge Randall J. Sherman

Dept. CX105

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

DARAPHONE SIMMA and WENDY SANTOS,
individuals, on behalf of themselves and on behalf
of all persons similarly situated, and on behalf of the
State of California, as private attorney general,

Plaintiff,

vs.

BIOSENSE WEBSTER, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2023-01342539-CU-OE-CXC

**SECOND 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; and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246.
10. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B), CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 1 1070(14) (FAILURE TO PROVIDE SEATING), AND THE APPLICABLE WAGE ORDER(S).

DEMAND FOR A JURY TRIAL

1 Daraphone Simma and Wendy Santos (collectively, “PLAINTIFFS”), individuals, on behalf of
2 themselves and all other similarly situated current and former employees and on behalf of the State of
3 California, as private attorney general, allege on information and belief, except for their own acts and
4 knowledge which are based on personal knowledge, the following.

5
6 **THE PARTIES**

7 1. Biosense Webster, Inc. (“DEFENDANT”) is a California Corporation that at all relevant
8 times mentioned herein conducted and continues to conduct substantial business in California.

9 2. DEFENDANT is a global leader in the science of diagnosing and treating heart rhythm
10 disorders.

11 3. Plaintiff Daraphone Simma was employed by DEFENDANT in California from
12 December of 2021 to April of 2023 and was at all times classified by DEFENDANT as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked. Plaintiff Wendy Santos was
15 employed by DEFENDANT in California from November of 2020 and was at all times classified by
16 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required
17 meal and rest periods and payment of minimum and overtime wages due for all time worked.

18 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
19 defined as all individuals who are or previously were employed by DEFENDANT who were classified
20 as non-exempt in the State of California (the “CALIFORNIA CLASS”) at any time during the period
21 from August 15, 2019 through either (i) September 19, 2024, or (ii) the latest date when there are no
22 more than 61,600 workweeks collectively worked by the Class Members, whichever of these two dates
23 occurs later (the “CALIFORNIA CLASS PERIOD”).

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

26 5. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
28 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to

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

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

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

24 **THE CONDUCT**

25
26 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
27 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
28 meaning the time during which an employee is subject to the control of an employer, including all

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

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

24 10. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
25 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
26 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANT. The non-discretionary incentive program provided all employees
28 paid on an hourly basis with incentive compensation when the employees met the various

1 performance goals set by DEFENDANT. However, when calculating the regular rate of pay in
2 order to pay overtime and meal and rest break premiums to PLAINTIFFS and other CALIFORNIA
3 CLASS Members, DEFENDANT failed to include the incentive compensation as part of the
4 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break
5 premium pay. Management and supervisors described the incentive program to potential and new
6 employees as part of the compensation package. As a matter of law, the incentive compensation
7 received by PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the
8 "regular rate of pay." The failure to do so has resulted in a underpayment of overtime compensation
9 and meal and rest break premiums to PLAINTIFFS and other CALIFORNIA CLASS Members by
10 DEFENDANT.

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

23 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA
24 CLASS Members were also required from time to time to work in excess of four (4) hours without
25 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
26 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from
27 time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
28 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at

1 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.

2 PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one hour
3 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers to
4 provide employees with off-duty rest periods, which the California Supreme Court defined as time
5 during which an employee is relieved from all work related duties and free from employer control.
6 In so doing, the Court held that the requirement under California law that employers authorize and
7 permit all employees to take rest period means that employers must relieve employees of all duties
8 and relinquish control over how employees spend their time which includes control over the
9 locations where employees may take their rest period. Employers cannot impose controls that
10 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
11 DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA CLASS Members from
12 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFFS and
13 other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

14 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
15 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of
16 time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
17 DEFENDANT was required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all
18 time worked, meaning the time during which an employee was subject to the control of an
19 employer, including all the time the employee was permitted or suffered to permit this work.
20 DEFENDANT required these employees to work off the clock without paying them for all the time
21 they were under DEFENDANT's control. As such, DEFENDANT knew or should have known that
22 PLAINTIFFS and the other members of the CALIFORNIA CLASS were under compensated for all
23 time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time
24 worked by working without their time being accurately recorded and without compensation at the
25 applicable minimum wage and overtime wage rates. To the extent that the time worked off the
26 clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum wages
27 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.
28

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

19 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
20 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
21 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code
22 § 210 provides:

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

16. DEFENDANT from time to time failed to pay PLAINTIFFS and members of the
CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll

1 period in accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly”
2 regular wage payments.

3 17. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA
4 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
5 Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-
6 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
7 underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of
8 pay.

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

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

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

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

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

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

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

27 24. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
28 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage Order

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

9 **JURISDICTION AND VENUE**

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

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

19 **THE CALIFORNIA CLASS**

20 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
21 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
22 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
23 individuals who are or previously were employed by DEFENDANT who were classified as non-
24 exempt in the State of California (the "CALIFORNIA CLASS") at any time during the period from
25 August 15, 2019 through either (i) September 19, 2024, or (ii) the latest date when there are no
26 more than 61,600 workweeks collectively worked by the Class Members, whichever of these two
27 dates occurs later (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
28

1 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

2
3 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
4 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 37. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
26 and Ninth causes Action on behalf of a California sub-class, defined as all members of the
27 CALIFORNIA CLASS who are or previously were employed by DEFENDANT who were
28 classified as non-exempt in the State of California (the "CALIFORNIA LABOR SUB-CLASS") at

1 any time during the period from August 15, 2019 through either (i) September 19, 2024, or (ii) the
2 latest date when there are no more than 61,600 workweeks collectively worked by the Class
3 Members, whichever of these two dates occurs later (the “CALIFORNIA LABOR SUB-CLASS
4 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate
5 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
6 (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22
23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

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

26 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**
27
28

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

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

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

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

14 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

21 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
24 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful
27 and unfair business practices.
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

[illegible]

5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

5
6
7
8
9
20
21
22
23
24
25
26
27
28

8
9
10
11
12
13
14
15
16
17
18

20
21
22
23
24
25
26
27
28

25
26
27
28

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

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

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

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

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

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

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

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

18 19 **THIRD CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

21 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

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

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

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

4 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to the
6 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
7 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not subject
8 to a valid collective bargaining agreement that would preclude the causes of action contained herein
9 this Complaint. Rather, PLAINTIFFS bring this Action on behalf of themselves and the
10 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-
11 waiveable rights provided by the State of California.

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

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

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

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

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

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

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

24
25 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

25 93. As a proximate result of the aforementioned violations, PLAINTIFFS and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
27 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
28

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

26 **SIXTH CAUSE OF ACTION**

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

28 **[Cal. Lab. Code § 226]**

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

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

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

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

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

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

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

18 19 **SEVENTH CAUSE OF ACTION**

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

21 **[Cal. Lab. Code § 2802]**

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

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

26 103. Cal. Lab. Code § 2802 provides, in relevant part, that:

27 An employer shall indemnify his or her employee for all necessary expenditures or
28 losses incurred by the employee in direct consequence of the discharge of his or her
duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful.

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

20 105. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred
21 by themselves and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
22 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
23 statutory rate and costs under Cal. Lab. Code § 2802.

24 **EIGHTH CAUSE OF ACTION**

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

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

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

28 **and Against All Defendants)**

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

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

As used in this article:

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

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

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

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

11 If an employee not having a written contract for a definite period quits his or her
12 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
13 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
14 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
15 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
16 quitting.

17 110. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-
18 CLASS Members' employment contract.

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

20 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
21 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
22 therefor is commenced; but the wages shall not continue for more than 30 days.

23 112. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS
24 Members has terminated and DEFENDANT has not tendered payment of all wages owed as
25 required by law. Additionally, at all times during the term of PLAINTIFFS' employment with
26 DEFENDANT, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members earned and
27 accrued vested vacation and holiday time on the date of their termination pursuant to
28 DEFENDANT's uniform vacation policies and applicable California law. The amount of vacation

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

28 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the

1 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who
2 have not been fully paid their wages due to them, PLAINTIFFS demand thirty days of pay as
3 penalty for not paying all wages due at time of termination for all employees who terminated
4 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting
5 and payment of all wages due, plus interest and statutory costs as allowed by law.

6
7 **NINTH CAUSE OF ACTION**

8 **For Failure to Pay Sick Pay Wages**

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

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

11 **and Against All Defendants)**

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

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

27 116. As a matter of policy and practice, DEFENDANT pays sick pay wages to
28

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

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

27 118. As alleged herein and as a matter of policy and practice, DEFENDANT
28

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

13 119. Such a pattern, practice, and uniform administration of corporate policy is
14 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-
15 CLASS to applicable penalties, attorney's fees, and costs of suit.

17 **TENTH CAUSE OF ACTION**

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

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

20 **(By Plaintiff Daraphone Simma and Against All Defendants)**

21 120. Plaintiff Daraphone Simma ("PAGA PLAINTIFF") realleges and incorporates by this
22 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

1 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
2 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
3 claims cannot be subject to arbitration.

4 122. PAGA PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General Act,
6 brings this Representative Action on behalf of the State of California with respect to herself and all
7 individuals who are or previously were employed by Defendant who were classified as non-exempt in
8 the State of California ("AGGRIEVED EMPLOYEES") at any time during the period from July 25,
9 2022 through the end date of the Class Period (the "PAGA PERIOD").

10 123. On July 25, 2023, Plaintiff Simma gave written notice by electronic mail to the Labor
11 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
12 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The
13 statutory waiting period for PAGA PLAINTIFF to add these allegations to the Complaint has expired
14 and PAGA PLAINTIFF did not receive a response from the Agency. As a result, pursuant to Section
15 2699.3, PAGA PLAINTIFF may now commence a representative civil action under PAGA pursuant
16 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES
17 as herein defined.

18 124. The policies, acts and practices heretofore described were and are an unlawful business
19 act or practice because DEFENDANT (a) failed to provide PAGA PLAINTIFF and the AGGRIEVED
20 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
21 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
22 sick pay wages, (e) failed to reimburse employees for required expenses, and (f) failed to provide wages
23 when due, and (g) failed to provide suitable seating, all in violation of the applicable Labor Code
24 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 225, 226(a), 226.7, 227.3,
25 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
26 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14)
27 (Failure to Provide Seating), and the applicable Wage Order(s). PAGA PLAINTIFF hereby seeks
28 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004

1 as the representative of the State of California for the illegal conduct perpetrated on PAGA PLAINTIFF
2 and the AGGRIEVED EMPLOYEES.

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

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally,
10 as follows:

11 1. On behalf of the CALIFORNIA CLASS:

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

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

- 23 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth
24 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
25 pursuant to Cal. Code of Civ. Proc. § 382;
26 B) Compensatory damages, according to proof at trial, including compensatory damages
27 for minimum and overtime compensation due PLAINTIFFS and the other members of
28

the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
- G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

- A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,
- B) An award of attorneys' fees and costs of suit, as allowable under the law, including but not limited to, pursuant to Labor Code § 2699.

4. On all claims:

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

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: November 14, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

Dated: November 14, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

Attorneys for Plaintiff