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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By E. Engel ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PAUL WILLIAMS, an individual, on behalf of himself
and on behalf of all persons similarly situated,

Plaintiff,

vs.

ZOOLOGICAL SOCIETY OF SAN DIEGO, a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00043072-CU-OE-CTL

**FIRST AMENDED CONSOLIDATED CLASS
AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et Seq.*;
2. Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1;
3. Failure to Pay Overtime Wages in Violation of Cal. Lab. Code § 510;
4. Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable Iwc Wage Order;
5. Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable Iwc Wage Order;
6. Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226;
7. Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802;
8. Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203;
9. Failure to Pay Sick Pay Wages in Violation of Cal. Lab Code §§201-203, 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 Paul Williams (“PLAINTIFF”), an individual, on behalf of himself and all other similarly
2 situated current and former employees alleges on information and belief, except for his own acts
3 and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. Zoological Society of San Diego (“DEFENDANT”) is a corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial business in
8 California.

9 2. DEFENDANT is an organization headquartered in San Diego that operates the
10 San Diego Zoo and the San Diego Zoo Safari Park.

11 3. PLAINTIFF was employed by DEFENDANT in California from 1997 to August
12 of 2023 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
13 an hourly basis, and entitled to the legally required meal and rest periods and payment of
14 minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT who were
17 classified and worked as non-exempt in the State of California (the “CALIFORNIA CLASS”)
18 from October 4, 2019, to the earlier of preliminary approval or October 29, 2024 (the
19 “CALIFORNIA CLASS PERIOD”).

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

1 CLASS who have been economically injured by DEFENDANT's past and current unlawful
2 conduct, and all other appropriate legal and equitable relief.

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

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

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an
24 employer, including all the time the employee is suffered or permitted to work.
25 DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without
26 paying them for all the time they are under DEFENDANT's control. Among other things,
27 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
28 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by

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

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

21 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
22 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
23 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
24 performance for DEFENDANT. The non-discretionary incentive program provided all
25 employees paid on an hourly basis with incentive compensation when the employees met the
26 various performance goals set by DEFENDANT. However, when calculating the regular
27 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
28 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive

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

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

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

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

14 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
15 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
16 actual amount of time these employees worked. Pursuant to the Industrial Welfare
17 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
19 employee was subject to the control of an employer, including all the time the employee was
20 permitted or suffered to permit this work. DEFENDANT required these employees to work
21 off the clock without paying them for all the time they were under DEFENDANT's control.
22 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
24 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
25 working without their time being accurately recorded and without compensation at the
26 applicable minimum wage and overtime wage rates. To the extent that the time worked off
27 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
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1 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
2 1197, and 1197.1.

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

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

27 in [I]n addition to, and entirely independent and apart from, any other penalty provided
28 this article, every person who fails to pay the wages of each employee as provided in
Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For

1 each subsequent violation, or any willful or intentional violation, two hundred dollars
2 (\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

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

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

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

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

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

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

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

23 23. In the course of their employment PLAINTIFF and other CALIFORNIA
24 CLASS Members as a business expense, were required by DEFENDANT to use their own
25 personal cellular phones as a result of and in furtherance of their job duties as employees for
26 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
27 associated with the use of their personal cellular phones for DEFENDANT's benefit.
28 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by

1 DEFENDANT to use their personal cellular phones. As a result, in the course of their
2 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
3 CLASS incurred unreimbursed business expenses which included, but were not limited to,
4 costs related to the use of their personal cellular phones all on behalf of and for the benefit
5 of DEFENDANT.

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

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

17 26. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
18 Employees, DEFENDANT violated California Labor Code Section 1198 and California
19 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
20 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on
21 behalf of PLAINTIFF and other Aggrieved Employees as provided herein. Providing
22 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
23 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
24 Code and regulations promulgated thereunder as herein alleged.

25 27. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
26 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage
27 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due
28 to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-

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

8 **JURISDICTION AND VENUE**

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

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

19 **THE CALIFORNIA CLASS**

20 30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
21 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
22 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
23 California class, defined as all individuals who are or previously were employed by
24 DEFENDANT who were classified and worked as non-exempt in the State of California
25 (the "CALIFORNIA CLASS") from October 4, 2019, to the earlier of preliminary approval
26 or October 29, 2024 (the "CALIFORNIA CLASS PERIOD").
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28

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

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

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

20 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

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

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

1 minimum wages owed and overtime wages owed for work performed
2 by these employees; and,

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

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

1 counsel who are competent and experienced in Class Action litigation.
2 There are no material conflicts between the claims of the representative
3 PLAINTIFF and the members of the CALIFORNIA CLASS that would
4 make class certification inappropriate. Counsel for the CALIFORNIA
5 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
6 Members.

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

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

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

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

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

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

1 exclusively to restitution because through this claim
2 PLAINTIFF seeks declaratory relief holding that the
3 DEFENDANT's policy and practices constitute unfair
4 competition, along with declaratory relief, injunctive relief, and
5 incidental equitable relief as may be necessary to prevent and
6 remedy the conduct declared to constitute unfair competition;

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

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

parties to the adjudication or substantially impair or
impede their ability to protect their interests;

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

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

25 39. DEFENDANT maintains records from which the Court can ascertain and
26 identify by job title each of DEFENDANT's employees who have been intentionally
27 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
28

1 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
2 similarly situated employees when they have been identified.

3
4 **THE CALIFORNIA LABOR SUB-CLASS**

5 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
6 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
7 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT who
8 were classified and worked as non-exempt in the State of California (the “CALIFORNIA
9 LABOR SUB-CLASS”) from October 4, 2019, to the earlier of preliminary approval or
10 October 29, 2024 (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal.
11 Code of Civ. Proc. § 382.

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

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

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

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

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

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

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

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

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

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

- 1 (c) The claims of the representative PLAINTIFF are typical of the claims
2 of each member of the CALIFORNIA LABOR SUB-CLASS.
3 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
4 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
5 was subjected to the DEFENDANT's practice and policy which failed
6 to pay the correct amount of wages due to the CALIFORNIA LABOR
7 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
8 DEFENDANT's employment practices. PLAINTIFF and the members
9 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
10 identically harmed by the same unlawful, deceptive, and unfair
11 misconduct engaged in by DEFENDANT; and,
- 12 (d) The representative PLAINTIFF will fairly and adequately represent and
13 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
14 has retained counsel who are competent and experienced in Class
15 Action litigation. There are no material conflicts between the claims of
16 the representative PLAINTIFF and the members of the CALIFORNIA
17 LABOR SUB-CLASS that would make class certification
18 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
19 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
20 CLASS Members.

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

- 23 (a) Without class certification and determination of declaratory, injunctive,
24 statutory and other legal questions within the class format, prosecution
25 of separate actions by individual members of the CALIFORNIA
26 LABOR SUB-CLASS will create the risk of:
- 27 1) Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA LABOR SUB-CLASS which

1 would establish incompatible standards of conduct for the
2 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

3 2) Adjudication with respect to individual members of the
4 CALIFORNIA LABOR SUB-CLASS which would as a
5 practical matter be dispositive of interests of the other members
6 not party to the adjudication or substantially impair or impede
7 their ability to protect their interests.

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

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

22 1) The interests of the members of the CALIFORNIA LABOR
23 SUB-CLASS in individually controlling the prosecution or
24 defense of separate actions in that the substantial expense of
25 individual actions will be avoided to recover the relatively small
26 amount of economic losses sustained by the individual
27 CALIFORNIA LABOR SUB-CLASS Members when compared
28

1 to the substantial expense and burden of individual prosecution
2 of this litigation;

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

5 A. Inconsistent or varying adjudications with respect to
6 individual members of the CALIFORNIA LABOR SUB-
7 CLASS, which would establish incompatible standards of
8 conduct for the DEFENDANT; and/or,

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

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

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

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

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members who worked for DEFENDANT in California at any
5 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
6 (i) Class treatment provides manageable judicial treatment calculated to
7 bring a efficient and rapid conclusion to all litigation of all wage and
8 hour related claims arising out of the conduct of DEFENDANT as to
9 the members of the CALIFORNIA LABOR SUB-CLASS.

10
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

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

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

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

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

24 Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction. The court
26 may make such orders or judgments, including the appointment of a receiver,
27 as may be necessary to prevent the use or employment by any person of any
28 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.

1 Cal. Bus. & Prof. Code § 17203.

2 52. By the conduct alleged herein, DEFENDANT has engaged and continues to
3 engage in a business practice which violates California law, including but not limited to, the
4 applicable Industrial Wage Order(s), the California Code of Regulations and the California
5 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
6 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
7 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
8 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
9 held to constitute unfair competition, including restitution of wages wrongfully withheld.

10 53. By the conduct alleged herein, DEFENDANT's practices were unlawful and
11 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
12 unscrupulous or substantially injurious to employees, and were without valid justification or
13 utility for which this Court should issue equitable and injunctive relief pursuant to Section
14 17203 of the California Business & Professions Code, including restitution of wages
15 wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

17 **SECOND CAUSE OF ACTION**

18 **For Failure To Pay Minimum Wages**

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

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

21 **and Against All Defendants)**

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

25 65. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
27 California Labor Code and the Industrial Welfare Commission requirements for
28

1 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and
2 CALIFORNIA CLASS Members.

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

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

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

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

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

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

27 72. As a direct result of DEFENDANT's unlawful wage practices as alleged
28 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did

1 not receive the correct minimum wage compensation for their time worked for
2 DEFENDANT.

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

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

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

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

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

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

15 **THIRD CAUSE OF ACTION**

16 **For Failure To Pay Overtime Compensation**

17 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

12 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
13 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
14 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
15 including overtime work.

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

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

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

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

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

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

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

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

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

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

28 **FOURTH CAUSE OF ACTION**

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For Failure to Provide Required Meal Periods
[Cal. Lab. Code §§ 226.7 & 512]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)

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

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

95. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with

1 the applicable Wage Order, one additional hour of compensation at each employee's regular
2 rate of pay for each workday that a meal period was not provided.

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

7 **FIFTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

26 99. DEFENDANT further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
28 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with

1 the applicable Wage Order, one additional hour of compensation at each employee's regular
2 rate of pay for each workday that rest period was not provided.

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

7 **SIXTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 226]**

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

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

15 102. Cal. Labor Code § 226 provides that an employer must furnish employees with
16 an "accurate itemized" statement in writing showing:

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

103. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate

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

19 104. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
20 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
22 expended calculating the correct wages for all missed meal and rest breaks and the amount
23 of employment taxes which were not properly paid to state and federal tax authorities.
24 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
25 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
26 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
27 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
28 226, in an amount according to proof at the time of trial (but in no event more than four

1 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
2 CALIFORNIA LABOR SUB-CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 2802]**

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

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

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

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

15 107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
16 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
17 CLASS members for required expenses incurred in the discharge of their job duties for
18 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
19 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
20 limited to, costs related to using their personal cellular phones on behalf of and for the
21 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
22 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
23 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
24 and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
25 CLASS members for expenses resulting from using their personal cellular phones and home
26 offices for DEFENDANT within the course and scope of their employment for
27 DEFENDANT. These expenses were necessary to complete their principal job duties.
28 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this

1 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
2 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
3 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
4 these expenses as an employer is required to do under the laws and regulations of California.

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

9 **EIGHTH CAUSE OF ACTION**

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

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

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

13 **and Against All Defendants)**

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

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

18 As used in this article:

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

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

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

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

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

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

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

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

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

10 115. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
11 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
12 owed as required by law. Additionally, at all times during the term of PLAINTIFF's
13 employment with DEFENDANT, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
14 Members earned and accrued vested vacation and holiday time on the date of their
15 termination pursuant to DEFENDANT's uniform vacation policies and applicable California
16 law. The amount of vacation pay PLAINTIFF and the other CALIFORNIA LABOR SUB-
17 CLASS Members earned and accumulated is evidenced by DEFENDANT's business
18 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
19 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay
20 such wages at the regular rate of pay and more specifically the final rate of pay that included
21 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
22 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFF and other
23 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of
24 including all of PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-
25 discretionary incentive compensation into the vacation wage payment calculations.
26 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
27 PLAINTIFF and other CALIFORNIA LABOR CLASS Members would be paid vacation
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1 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
2 practice, policy and procedure to deny paying the PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
4 DEFENDANT failed to pay the PLAINTIFF and the members of the CALIFORNIA
5 LABOR SUB-CLASS all vested vacation time as wages due upon employment termination,
6 in violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
7 DEFENDANT underpaid waiting time penalties to PLAINTIFF and other CALIFORNIA
8 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
9 PLAINTIFF's' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
10 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
11 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to
12 provide compensation for earned, accrued and vested vacation and holiday time, as well as
13 the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
14 unlawful, unfair and deceptive practice to the detriment of the PLAINTIFF and the members
15 of the CALIFORNIA LABOR SUB-CLASS . DEFENDANT's uniform practice and policy
16 of failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday
17 time accumulated at employment termination violated and continues to violate Section 227.3
18 of the California Labor Code.

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

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1 **NINTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 201-203, 210, 233, 246]**

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

5 **and Against All Defendants)**

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

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

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

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

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

21 121. As alleged herein and as a matter of policy and practice, DEFENDANT
22 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
23 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
24 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 210, 233, and 246,
25 among other Labor Code provisions. PLAINTIFF is informed and believes that
26 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
27 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
28 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also

1 include those benefits to which an employee is entitled as a part of his or her compensation,
2 including money, room, board, clothing, vacation pay, *and sick pay.*” *Murphy v. Kenneth*
3 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
4 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
5 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
6 penalties.

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

11 **TENTH CAUSE OF ACTION**

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

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

14 **(By PLAINTIFF and Against All Defendants)**

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

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

27 125. PLAINTIFF, and such persons that may be added from time to time who
28 satisfy the requirements and exhaust the administrative procedures under the Private

1 Attorney General Act, brings this Representative Action on behalf of the State of California
2 with respect to herself and all individuals who are or previously were employed by
3 Defendant who were classified as non-exempt in the State of California ("AGGRIEVED
4 EMPLOYEES") from January 3, 2023, to the earlier of preliminary approval or October 29,
5 2024 (the "PAGA PERIOD").

6 126. On September 26, 2023, PLAINTIFF gave written notice by electronic mail to
7 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
10 to the Complaint has expired and PLAINTIFF did not receive a response from the Agency.
11 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative
12 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California
13 with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

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

1 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
3 and/or §2802.
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8 Dated: September 12, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
9

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

12 **GOMEZ TRIAL ATTORNEYS, APLC**
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15 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

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

Dated: September 12, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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