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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TRISTAN CASADEI and KELLIE SOLES, on
behalf of the State of California, as private
attorneys general,

Plaintiffs,

vs.

THE GUESTOLOGY GROUP, INC., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 23SMCV06045

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 246, 351,
510, 512, 558(a)(1)(2), 1194, 1197,
1197.1, 1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 1 1070(14)
(Failure to Provide Seating), and the
applicable Wage Order(s).

1 Plaintiffs Tristan Casadei and Kellie Soles (“PLAINTIFFS”), on behalf of the people
2 of the State of California and as “aggrieved employees” acting as private attorneys general
3 under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only,
4 allege on information and belief, except for their own acts and knowledge which are based on
5 personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendant The Guestology Group, Inc.
8 (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for themselves,
9 and on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFFS do **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFFS do not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

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

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

22 **THE PARTIES**

23 4. The Guestology Group, Inc. (“DEFENDANT”) is a corporation that at all relevant
24 times mentioned herein conducted and continues to conduct substantial business in California.

25 5. DEFENDANT owns and operates Calamigos Ranch Hotel in Malibu, California.

26 6. Plaintiff Casadei has been employed by DEFENDANT in California since May
27 of 2021. DEFENDANT also violated California Labor Code § 2810.5(b) by failing to advise
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1 Plaintiff Casadei within seven days of his hourly rate change. Plaintiff Casadei has been at all
2 times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and
3 entitled to the legally required meal and rest periods and payment of minimum and overtime
4 wages due for all time worked.

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

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

16 9. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
17 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
18 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
19 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
20 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
21 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
22 California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and
23 the applicable Wage Order(s). Based upon the foregoing, PLAINTIFFS and all
24 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
25 2699, *et seq.*

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

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

16 17 **THE CONDUCT**

18 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
19 was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time
20 worked, meaning the time during which an employee is subject to the control of an
21 employer, including all the time the employee is suffered or permitted to work.
22 DEFENDANT requires PLAINTIFFS and the AGGRIEVED EMPLOYEES to work
23 without paying them for all the time they are under DEFENDANT's control. Among other
24 things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is
25 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time
26 interrupted by work assignments while clocked out for what should have been
27 PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company
28 policy and procedure, administers a uniform practice of rounding the actual time worked and

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

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

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

1 As a matter of law, the incentive compensation received by PLAINTIFFS and the
2 AGGRIEVED EMPLOYEES must be included in the “regular rate of pay.” The failure to
3 do so has resulted in a underpayment of overtime compensation and meal and rest break
4 premiums to PLAINTIFFS and the AGGRIEVED EMPLOYEES by DEFENDANT.

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

17 16. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED
18 EMPLOYEES were also required from time to time to work in excess of four (4) hours
19 without being provided ten (10) minute rest periods. Further, these employees were denied
20 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
21 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
22 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
23 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
24 hours or more from time to time. PLAINTIFFS and the AGGRIEVED EMPLOYEES were
25 also not provided with one hour wages in lieu thereof. Additionally, the applicable
26 California Wage Order requires employers to provide employees with off-duty rest periods,
27 which the California Supreme Court defined as time during which an employee is relieved
28 from all work related duties and free from employer control. In so doing, the Court held that

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

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

25 18. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
26 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
27 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
28 provides that every employer shall furnish each of his or her employees with an accurate

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

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

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

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

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

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

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

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

24 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
25 to collect or receive from an employee any part of wages theretofore paid by said employer
26 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and
27 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
28 PLAINTIFFS and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the

1 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED
2 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
3 pay period and upon termination.

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

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

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

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

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

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

15 31. During the PAGA PERIOD, pursuant to DEFENDANT's company policies
16 and practices, PLAINTIFFS and other AGGRIEVED EMPLOYEES were forced to forfeit
17 gratuities left for them by customers to DEFENDANT's agents who provided no service to
18 the customers that resulted in the gratuity. DEFENDANT routinely added anywhere from
19 18%-22% service charges to its food, massage and beverage banquet bills. These service
20 charges were in the form of automatic charges which customers are required to pay, and
21 which reasonably appear to be gratuities for the service staff. It is typical and customary in
22 the hospitality industry that establishments impose gratuity charges in the range of 18%-22%
23 of the food and beverage bill. Thus, when customers have paid these charges, it is
24 reasonable for them to have believed they were gratuities to be paid to the service staff.
25 Indeed, because many of these charges are depicted to customers, and the custom in the food
26 and beverage industry that gratuities in the range of 18%-22% are paid for food and
27 beverage service, customers have paid these charges reasonably believing they were remitted
28 to the service staff. However, DEFENDANT has not remitted the total proceeds of these

1 gratuities to the non-managerial employees who serve the food and beverages. Instead,
2 DEFENDANT has a policy and practice of retaining for itself a portion of these gratuities
3 and/or using a portion of these gratuities to pay managers or other non-service employees.
4 As a result, PLAINTIFFS and AGGRIEVED EMPLOYEES have not received the total
5 proceeds of the gratuities, to which they are entitled to under California law.

6 32. DEFENDANT is generally in the business of owning and operating hotels,
7 including the pubs and restaurants in the hotels. In addition, DEFENDANT also provides
8 banquet services to large groups, such as wedding parties and other banquet events. During
9 the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED EMPLOYEES were in the
10 “chain of service” and earned gratuities based on their service for their customers.
11 However, PLAINTIFFS and AGGRIEVED EMPLOYEES were forced to forfeit portions of
12 their gratuities, which said gratuities were kept by DEFENDANT and their agents who were
13 not in the chain of service from which the gratuity resulted. PLAINTIFFS and other
14 AGGRIEVED EMPLOYEES contend that any gratuities kept by DEFENDANT were illegal
15 and in violation of California law because PLAINTIFFS and other AGGRIEVED
16 EMPLOYEES, not DEFENDANT, provided the service for to whom the gratuity should
17 have been paid.

18 33. California Labor Code § 351 establishes the requirements for an employer
19 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
20 employees. California Labor Code § 351 expressly prohibits employers and their agents
21 from collecting, taking, or receiving any portion of a gratuity. California Labor Code §
22 350(e) defines the term “gratuity” as including any money that has been paid or given or left
23 for an employee by a patron of a business over and above the actual amount due the business
24 for services rendered or for goods, food, drink or articles sold or served to such patron.
25 Labor Code § 353 requires employers to keep accurate records of all gratuities they receive,
26 directly or indirectly.

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

7 35. The employment of Plaintiff Soles and some AGGRIEVED EMPLOYEES has
8 terminated and DEFENDANT has not tendered payment of all wages owed as required by
9 law. Additionally, at all times during the term of Plaintiff Soles’ employment with
10 DEFENDANT, Plaintiff Soles and other AGGRIEVED EMPLOYEES earned and accrued
11 vested vacation and holiday time on the date of their termination pursuant to
12 DEFENDANT's uniform vacation policies and applicable California law. The amount of
13 vacation pay Plaintiff Soles and the other AGGRIEVED EMPLOYEES earned and
14 accumulated is evidenced by DEFENDANT’s business records. Additionally,
15 DEFENDANT also underpaid accrued vested vacation wages to Plaintiff Soles and other
16 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay and
17 more specifically the final rate of pay that included all non-discretionary incentive
18 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT
19 underpaid vacation wages to Plaintiff Soles and other AGGRIEVED EMPLOYEES at their
20 base rates of pay, instead of including all of Plaintiff Soles’ and other AGGRIEVED
21 EMPLOYEES’ non-discretionary incentive compensation into the vacation wage payment
22 calculations. DEFENDANT failed to specify in DEFENDANT’s written vacation policy the
23 rate at which Plaintiff Soles and other AGGRIEVED EMPLOYEES would be paid vacation
24 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
25 practice, policy and procedure to deny paying Plaintiff Soles and other AGGRIEVED
26 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay
27 Plaintiff Soles and other AGGRIEVED EMPLOYEES all vested vacation time as wages due
28 upon employment termination, in violation of the California Labor Code, Sections 201, 202,

1 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to Plaintiff Soles
2 and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of
3 Plaintiff Soles' and other AGGRIEVED EMPLOYEES' non-discretionary compensation
4 into the waiting time penalty calculations. This failure by DEFENDANT is believed to be
5 the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation
6 for earned, accrued and vested vacation and holiday time, as well as the corresponding
7 waiting time penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and
8 deceptive practice to the detriment of Plaintiff Soles and other AGGRIEVED
9 EMPLOYEES. DEFENDANT's uniform practice and policy of failing to pay the
10 AGGRIEVED EMPLOYEES for all vested vacation and holiday time accumulated at
11 employment termination violated and continues to violate Section 227.3 of the California
12 Labor Code.

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

18 **JURISDICTION AND VENUE**

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

21 38. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT
23 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and
24 facilities in this County and/or conducts substantial business in this County, and (ii)
25 committed the wrongful conduct herein alleged in this County against PLAINTIFFS and
26 other AGGRIEVED EMPLOYEES.
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1 herein. The statutory waiting period for PLAINTIFFS to add these allegations to the
2 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now
3 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
4 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

20 21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
23 severally, as follows:

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

26
27
28 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor Code §558(a)(3).

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

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

5 Dated: December 28, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
6 LLP

7 /s/ Nicholas De Blouw
8 By: _____
9 Norman B. Blumenthal
 Nicholas J. De Blouw
10 *Attorneys for Plaintiffs*

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

September 15, 2023

CA2953

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

The Guestology Group, Inc.
Certified Mail #95890710527001823745338
GARRETT GERSON
327 S LATIGO CYN RD
MALIBU, CA 90265

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by The Guestology Group, Inc. in California, including any employees staffed with The Guestology Group, Inc. by a third party, and classified as non-exempt employees during the time period of September 15, 2022 until a date as determined by the Court. Our offices represent Plaintiffs Tristan Casadei and Kellie Soles (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against The Guestology Group, Inc. (“Defendant”). Plaintiff Casadei has been employed by Defendant in California since May of 2021. Plaintiff Soles was employed by Defendant in California from February of 2022 to May of 2023. Plaintiffs were at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

Further, Defendant failed to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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Superior Court of California,
County of Los Angeles
9/07/2023 8:51 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Nunez, Deputy Clerk

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TRISTAN CASADEI and KELLIE SOLES,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

THE GUESTOLOGY GROUP, INC., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 23STCV21577

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; and,
10. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351

DEMAND FOR A JURY TRIAL

1 Tristan Casadei and Kellie Soles (“PLAINTIFFS”), individuals, on behalf of themselves
2 and all other similarly situated current and former employees allege on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. The Guestology Group, Inc. (“DEFENDANT”) is a corporation that at all relevant
7 times mentioned herein conducted and continues to conduct substantial business in California.

8 2. DEFENDANT owns and operates Calamigos Ranch Hotel in Malibu, California.

9 3. Plaintiff Casadei has been employed by DEFENDANT in California since May
10 of 2021. DEFENDANT also violated California Labor Code § 2810.5(b) by failing to advise
11 Plaintiff Casadei within seven days of his hourly rate change. Plaintiff Casadei has been at all
12 times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and
13 entitled to the legally required meal and rest periods and payment of minimum and overtime
14 wages due for all time worked.

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

19 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
20 class, defined as all individuals who are or previously were employed by DEFENDANT in
21 California, including any employees staffed with DEFENDANT by a third party, and classified
22 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
23 beginning four (4) years prior to the filing of this Complaint and ending on the date as
24 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
25 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
26 (\$5,000,000.00).

27 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their

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

10 7. The true names and capacities, whether individual, corporate, subsidiary,
11 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
12 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious
13 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
14 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
15 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
16 information and belief allege, that the Defendants named in this Complaint, including DOES
17 1 through 50, inclusive, are responsible in some manner for one or more of the events and
18 happenings that proximately caused the injuries and damages hereinafter alleged.

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

THE CONDUCT

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

10. State and federal law provides that employees must be paid overtime and meal and rest break premiums at one-and-one-half times their "regular rate of pay."

1 PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an hourly rate
2 plus incentive pay that is tied to specific elements of an employee's performance.

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

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

1 therefore forfeit meal breaks without additional compensation and in accordance with
2 DEFENDANT's corporate policy and practice.

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

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

1 employee was subject to the control of an employer, including all the time the employee was
2 permitted or suffered to permit this work. DEFENDANT required these employees to work
3 off the clock without paying them for all the time they were under DEFENDANT's control.
4 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
6 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by
7 working without their time being accurately recorded and without compensation at the
8 applicable minimum wage and overtime wage rates. To the extent that the time worked off
9 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
10 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
11 1197, and 1197.1.

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

1 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
2 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
3 § 226.

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

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

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

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

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

26 20. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
27 at the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely
28 earned non-discretionary incentive wages which increased their regular rate of pay.

1 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and
2 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
3 as required under Cal. Lab. Code Section 246.

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

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

22 23. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
23 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
24 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct
25 consequence of discharging their duties on behalf of DEFENDANT. Under California
26 Labor Code Section 2802, employers are required to indemnify employees for all expenses
27 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
28 states that "an employer shall indemnify his or her employee for all necessary expenditures

1 or losses incurred by the employee in direct consequence of the discharge of his or her
2 duties, or of his or her obedience to the directions of the employer, even though unlawful,
3 unless the employee, at the time of obeying the directions, believed them to be unlawful."

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

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

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

26 27. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved
27 Employees, DEFENDANT violated California Labor Code Section 1198 and California
28 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order

1 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties on
2 behalf of PLAINTIFFS and other Aggrieved Employees as provided herein. Providing
3 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
4 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
5 Code and regulations promulgated thereunder as herein alleged.

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

26 29. DEFENDANT is generally in the business of owning and operating hotels,
27 including the pubs and restaurants in the hotels. In addition, DEFENDANT also provides
28 banquet services to large groups, such as wedding parties and other banquet events. During

1 the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA CLASS
2 Members were in the “chain of service” and earned gratuities based on their service for their
3 customers. However, PLAINTIFFS and CALIFORNIA CLASS Members were forced to
4 forfeit portions of their gratuities, which said gratuities were kept by DEFENDANT and
5 their agents who were not in the chain of service from which the gratuity resulted.
6 PLAINTIFFS and other CALIFORNIA CLASS Members contend that any gratuities kept
7 by DEFENDANT were illegal and in violation of California law because PLAINTIFFS and
8 other CALIFORNIA CLASS Members, not DEFENDANT, provided the service for to
9 whom the gratuity should have been paid.

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

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

26 32. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the
27 legally required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable
28 Wage Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime

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

9 **JURISDICTION AND VENUE**

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

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

20 **THE CALIFORNIA CLASS**

21 35. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
22 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
23 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
24 California class, defined as all individuals who are or previously were employed by
25 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
26 party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
27
28

1 during the period beginning four (4) years prior to the filing of this Complaint and ending on
2 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount
3 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
4 million dollars (\$5,000,000.00).

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

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

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

24 39. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
25 CLASS Members is impracticable.

26 40. DEFENDANT violated the rights of the CALIFORNIA CLASS under
27 California law by:
28

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

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

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

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

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

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

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

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

- 27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
28 to act on grounds generally applicable to the CALIFORNIA CLASS,

1 making appropriate class-wide relief with respect to the CALIFORNIA
2 CLASS as a whole in that DEFENDANT failed to pay all wages due to
3 members of the CALIFORNIA CLASS as required by law;

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

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

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

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

27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA CLASS, which

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

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

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

15 4) A class action is superior to other available methods for the fair
16 and efficient adjudication of this litigation because class
17 treatment will obviate the need for unduly and unnecessary
18 duplicative litigation that is likely to result in the absence of
19 certification of this action pursuant to Cal. Code of Civ. Proc. §
20 382.

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

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

27 (b) A Class Action is superior to any other available method for the fair
28 and efficient adjudication of the claims of the members of the

1 CALIFORNIA CLASS because in the context of employment litigation
2 a substantial number of individual CALIFORNIA CLASS Members
3 will avoid asserting their rights individually out of fear of retaliation or
4 adverse impact on their employment;

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

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

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

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

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

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

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

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

6
7 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

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

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

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

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

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

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

11 Cal. Bus. & Prof. Code § 17203.

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

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

26 59. By the conduct alleged herein, DEFENDANT's practices were deceptive and
27 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
28 meal and rest periods, the required amount of compensation for missed meal and rest
periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
reimburse all necessary business expenses incurred, and failed to provide Fair Labor
Standards Act overtime wages due for overtime worked as a result of failing to include non-

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

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

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

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

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

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

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

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

5 **and Against All Defendants)**

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

9 70. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
10 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
11 California Labor Code and the Industrial Welfare Commission requirements for
12 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS
13 and CALIFORNIA CLASS Members.

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

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

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

22 74. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the
23 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
24 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
25 unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
26 other members of the CALIFORNIA LABOR SUB-CLASS.

27 75. DEFENDANT's unlawful wage and hour practices manifested, without
28 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16
17 **FOURTH CAUSE OF ACTION**

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

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

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

22 98. 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 99. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
26 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
27 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
28 and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA

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

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

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

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FIFTH CAUSE OF ACTION
For Failure to Provide Required Rest Periods
[Cal. Lab. Code §§ 226.7 & 512]
(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

102. 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.

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

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

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

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

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

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

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

8
9 **EIGHTH CAUSE OF ACTION**

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

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

12 **(By Plaintiff Soles and the CALIFORNIA LABOR SUB-CLASS**

13 **and Against All Defendants)**

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

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

18 As used in this article:

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

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

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

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

2 If an employee not having a written contract for a definite period quits his
3 or her employment, his or her wages shall become due and payable not
4 later than 72 hours thereafter, unless the employee has given 72 hours
5 previous notice of his or her intention to quit, in which case the employee
6 is entitled to his or her wages at the time of quitting. Notwithstanding any
7 other provision of law, an employee who quits without providing a 72-

1 hour notice shall be entitled to receive payment by mail if he or she so
2 requests and designates a mailing address. The date of the mailing shall
3 constitute the date of payment for purposes of the requirement to provide
4 payment within 72 hours of the notice of quitting.

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

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

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

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

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

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

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1 **NINTH CAUSE OF ACTION**

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

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

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

5 **and Against All Defendants)**

6 121. 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.

9 122. 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.

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

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

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

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

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

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

14 **TENTH CAUSE OF ACTION**

15 **For Failure To Pay Statutory Gratuities**

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

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

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

22 128. DEFENDANT's conduct, as set forth above, in failing to remit to non-
23 managerial banquet service employees the total proceeds of gratuities added to banquet
24 customers' bills constitutes a violation of California Labor Code Section 351. This violation
25 is enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code
26 17200 *et seq.* DEFENDANT's conduct constitutes unlawfully, unfair, and/or fraudulent
27 business acts or practices, in that DEFENDANT has violated California Labor Code Section
28

1 351 in not remitting to the non-managerial service employees the total gratuities that were
2 charged to customers.

3 129. As a proximate result of the aforementioned violations, PLAINTIFFS and
4 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
5 to proof at trial, including the loss of gratuities to which they were entitled. and seek all
6 wages earned and due, interest, penalties, expenses and costs of suit.

7
8 **PRAYER FOR RELIEF**

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

11 1. On behalf of the CALIFORNIA CLASS:

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

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

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

1 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
2 at the statutory rate;

3 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
4 in which a violation occurs and one hundred dollars (\$100) per each member of
5 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
6 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
7 an award of costs for violation of Cal. Lab. Code § 226;

8 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
9 the applicable IWC Wage Order;

10 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
11 1197;

12 F) The amount of the expenses PLAINTIFFS and each member of the
13 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
14 plus interest, and costs of suit.; and,

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

18 3. On all claims:

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

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

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

24 Dated: September 6, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

26 By: /s/ Nicholas De Blouw

27 Norman B. Blumenthal
Nicholas J. De Blouw

28 *Attorneys for Plaintiffs*

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DEMAND FOR A JURY TRIAL

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

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

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

Attorneys for Plaintiffs