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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

TIKIA HOPKINS, an individual, on behalf of herself
and on behalf of all persons similarly situated,

Plaintiff,

vs.

CHILD ACTION, INC., a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 24CV002513

**FIRST AMENDED 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; and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-203, 233, 246.
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

8 2. DEFENDANT provides child care resources in California.

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

13 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
14 defined as all individuals who are or previously were employed by DEFENDANT in California,
15 including any employees staffed with DEFENDANT by a third party, and classified as non-
16 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning
17 February 13, 2020, and ending on the date as determined by the Court (the “CALIFORNIA
18 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
19 CLASS Members is under five million dollars (\$5,000,000.00).

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

1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

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

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

20 21 **THE CONDUCT**

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

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

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

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

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

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

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

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

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

27 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
28 other members of the CALIFORNIA CLASS with complete and accurate wage statements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
2 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
3 permits or suffers to permit this work.

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

13 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

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

17 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
18 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
19 deceptively having in place company policies, practices and procedures
20 that failed to record and pay PLAINTIFF and the other members of the
21 CALIFORNIA CLASS for all time worked, including minimum wages
22 owed and overtime wages owed for work performed by these employees;
23 and,

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

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

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

27 37. In addition to meeting the statutory prerequisites to a Class Action, this action is
28 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 of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:

5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or,

9 2) Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.

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

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

27 (c) Common questions of law and fact exist as to the members of the
28 CALIFORNIA CLASS, with respect to the practices and violations of

1 California law as listed above, and predominate over any question
2 affecting only individual CALIFORNIA CLASS Members, and a Class
3 Action is superior to other available methods for the fair and efficient
4 adjudication of the controversy, including consideration of:

- 5 1) The interests of the members of the CALIFORNIA CLASS in
6 individually controlling the prosecution or defense of separate
7 actions in that the substantial expense of individual actions will be
8 avoided to recover the relatively small amount of economic losses
9 sustained by the individual CALIFORNIA CLASS Members when
10 compared to the substantial expense and burden of individual
11 prosecution of this litigation;
- 12 2) Class certification will obviate the need for unduly duplicative
13 litigation that would create the risk of:
 - 14 A. Inconsistent or varying adjudications with respect to
15 individual members of the CALIFORNIA CLASS, which
16 would establish incompatible standards of conduct for the
17 DEFENDANT; and/or,
 - 18 B. Adjudications with respect to individual members of the
19 CALIFORNIA CLASS would as a practical matter be
20 dispositive of the interests of the other members not parties
21 to the adjudication or substantially impair or impede their
22 ability to protect their interests;
- 23 3) In the context of wage litigation because a substantial number of
24 individual CALIFORNIA CLASS Members will avoid asserting
25 their legal rights out of fear of retaliation by DEFENDANT, which
26 may adversely affect an individual's job with DEFENDANT or
27 with a subsequent employer, the Class Action is the only means to
28 assert their claims through a representative; and,

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

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

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

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

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

18
19 **THE CALIFORNIA LABOR SUB-CLASS**

20 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
21 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members of
22 the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
23 California, including any employees staffed with DEFENDANT by a third party, and classified
24 as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the
25 period beginning February 13, 2021, and ending on the date as determined by the Court (the
26 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
27 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
28 Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 22 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB-
24 CLASS for missed meal and rest breaks in violation of the California
25 Labor Code and California regulations and the applicable California Wage
26 Order;

- (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (e) Whether DEFENDANT's conduct was willful.

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

- (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer

1 must pay the employee all wages due without abatement, by failing to
2 tender full payment and/or restitution of wages owed or in the manner
3 required by California law to the members of the CALIFORNIA LABOR
4 SUB-CLASS who have terminated their employment; and,

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

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

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

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

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

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

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

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

24 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
25 or refused to act on grounds generally applicable to the CALIFORNIA
26 LABOR SUB-CLASS, making appropriate class-wide relief with respect
27 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
28 DEFENDANT fails to pay all wages due. Including the correct wages for

1 all time worked by the members of the CALIFORNIA LABOR SUB-
2 CLASS as required by law;

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

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

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

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

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

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

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

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

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

25
26 **FIRST CAUSE OF ACTION**

27 **For Unlawful Business Practices**

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

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

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

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

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

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

15 Cal. Bus. & Prof. Code § 17203.

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

24 53. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
25 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
26 unscrupulous or substantially injurious to employees, and were without valid justification or
27 utility for which this Court should issue equitable and injunctive relief pursuant to Section
28

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 54. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
5 meal and rest periods, the required amount of compensation for missed meal and rest periods
6 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
7 all necessary business expenses incurred, and failed to provide Fair Labor Standards Act
8 overtime wages due for overtime worked as a result of failing to include non-discretionary
9 incentive compensation into their regular rates of pay for purposes of computing the proper
10 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.
11 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
12 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
13 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

24 63. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
26 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
27 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
28 other members of the CALIFORNIA CLASS have suffered and will continue to suffer

1 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
2 engage in these unlawful and unfair business practices.

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

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

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

8 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

14 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
15 required, permitted or suffered PLAINTIFF 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, PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
19 were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

23
24 **THIRD CAUSE OF ACTION**

25 **For Failure To Pay Overtime Compensation**

26 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

10
11 **FIFTH CAUSE OF ACTION**

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

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

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

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

19 98. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
20 time to time required to work in excess of four (4) hours without being provided ten (10) minute
21 rest periods. Further, these employees from time to time were denied their first rest periods of
22 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
23 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
24 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
25 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
26 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
27 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
28

1 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
2 periods by DEFENDANT and DEFENDANT's managers.

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

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

12 13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

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

- 23 (1) gross wages earned,
24 (2) total hours worked by the employee, except for any employee whose compensation
25 is solely based on a salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
27 Commission,
28 (3) the number of piecerate units earned and any applicable piece rate if the employee
is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders of the employee
may be aggregated and shown as one item,
(5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid,

1 (7) the name of the employee and his or her social security number, except that by
2 January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown on
4 the itemized statement,
(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee.

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

25 104. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
26 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended
28 calculating the correct wages for all missed meal and rest breaks and the amount of employment

1 taxes which were not properly paid to state and federal tax authorities. These damages are
2 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
3 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
4 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
5 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
6 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
7 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8
9 **SEVENTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 2802]**

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

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

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

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

21 107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
22 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
23 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
24 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
25 CLASS members for expenses which included, but were not limited to, costs related to using
26 their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically,
27 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by
28 DEFENDANT to use their personal cellular phones and home offices in order to perform work

1 related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFF and
2 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
3 personal cellular phones and home offices for DEFENDANT within the course and scope of
4 their employment for DEFENDANT. These expenses were necessary to complete their
5 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
6 waiver of this expectation. Although these expenses were necessary expenses incurred by
7 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to
8 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
9 for these expenses as an employer is required to do under the laws and regulations of California.

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

14 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

23 As used in this article:

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

25 (b) "Labor" includes labor, work, or service whether rendered or performed
26 under contract, subcontract, partnership, station plan, or other agreement if
the labor to be paid for is performed personally by the person demanding
27 payment.
28

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

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

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

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

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

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

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

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

24 116. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
25 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and
26 who have not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay
27 as penalty for not paying all wages due at time of termination for all employees who terminated
28

1 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and demands an
2 accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

3
4 **NINTH CAUSE OF ACTION**

5 **For Failure to Pay Sick Pay Wages**

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

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

8 **and Against All Defendants)**

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

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

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

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

9 120. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick leave,
10 vested sick pay wages are due and to be paid no later than the payday for the next regular
11 payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code §
12 201 provides that if an employer discharges an employee, wages earned and unpaid at the time
13 of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an employee
14 is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her
15 employment, unless the employee has given 72-hour notice of his or her intention to quit, in
16 which case the employee is entitled to his or her wages at the time of quitting. The Labor Code
17 penalizes 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 until
20 paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal. Lab. Code
21 § 210 provides penalties for untimely payments during employment. Under Cal. Lab. Code §§
22 203, 210 and 218, employees may sue to recover applicable penalties.

23 121. As alleged herein and as a matter of policy and practice, DEFENDANT
24 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
25 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages.
26 As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 210, 233, and 246, among other
27 Labor Code provisions. PLAINTIFF is informed and believes that DEFENDANT was advised
28 by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it

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

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

12
13 **TENTH CAUSE OF ACTION**

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

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

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

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

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

1 125. PLAINTIFF, and such persons that may be added from time to time who satisfy the
2 requirements and exhaust the administrative procedures under the Private Attorney General Act,
3 bring this Representative Action on behalf of the State of California with respect to themselves
4 and all individuals who are or previously were employed by DEFENDANT in California,
5 including any employees staffed with DEFENDANT by a third party, and classified as non-
6 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of October 23,
7 2022 until a date as determined by the Court (the "PAGA PERIOD").

8 126. On October 23, 2023, PLAINTIFF gave written notice by electronic mail to the
9 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
10 employer of the specific provisions of this code alleged to have been violated as required by
11 Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein
12 (*PAGA Notice only without draft complaint*). The statutory waiting period for PLAINTIFF to
13 add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
14 PLAINTIFF may pursue a representative civil action under PAGA pursuant to Section 2699 as
15 the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
16 defined.

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

1 penalties as a result of such conduct.¹ PLAINTIFF hereby seek recovery of civil penalties as
2 prescribed by the Labor Code Private Attorney General Act of 2004 as the representatives of
3 the State of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
4 EMPLOYEES.

5 128. All of the conduct and violations alleged herein occurred during the PAGA
6 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
7 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
8 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
9 AJDAR 12157 (Certified for Publication 12/19/18).

10 **PRAYER FOR RELIEF**

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

13 1. On behalf of the CALIFORNIA CLASS:

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

24 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
25
26

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

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
2 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
3 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
7 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
8 statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;
- 16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197;
- 18 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
19 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
20 costs of suit.; and,
- 21 G) The wages of all terminated employees in the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
23 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 24 3. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:
- 26 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004.
- 28 4. On all claims:

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

6
7 Dated: July 16, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

8
9
10 By: /s/ Nicholas J. De Blouw

Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: July 16, 2024 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

October 23, 2023

CA3100

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Child Action, Inc.

Certified Mail #95890710527001823777195

TRACEY A STRACK

10540 WHITE ROCK RD STE 180

RANCHO CORDOVA, CA 95670

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 Child Action, Inc. in California, including any employees staffed Child Action, Inc. by a third party, and classified as non-exempt employees during the time period of October 23, 2022 until a date as determined by the Court. Our offices represent Plaintiff Tikia Hopkins (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Child Action, Inc. (“Defendant”). Plaintiff was employed from October of 2022 to October of 2023 by Defendant in California. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods.

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

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

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

Your earliest response to this notice is appreciated. If you have any questions or 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.