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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

FERUZ MIRZA-ALIEV an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

800 MOFFETT MV MANAGER, LLC, a
limited liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No. 24CV431503

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

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-203, 233, 246; and
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Feruz Mirza-Aliev (“PLAINTIFF”), an individual, on behalf of himself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 his own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. 800 Moffett MV Manager, LLC (“DEFENDANT”) is a limited liability company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in California.

9 2. DEFENDANT owns and operates a hotel in California.

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

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT who were
16 classified as non-exempt in the State of California (the “CALIFORNIA CLASS”) at any time
17 during the period beginning February 23, 2020 and ending on April 8, 2025 (the
18 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
19 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

20 5. PLAINTIFF brings this Class Action on behalf of himself 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 and
15 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked,
16 is evidenced by DEFENDANT's business records.

17 9. State and federal law provides that employees must be paid overtime and meal and
18 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 that
20 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 payroll
28

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

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

9 18. Cal. Lab. Code Section 246(l)(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 pay
16 was paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA
17 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
18 Section 246.

19 20. As a pattern and practice, DEFENDANT regularly failed to pay 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 use
23 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 use
26 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 is
13 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.

26 **JURISDICTION AND VENUE**
27
28

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

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

THE CALIFORNIA CLASS

30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT who were classified as non-exempt in the State of California (the "CALIFORNIA CLASS") at any time during the period beginning February 23, 2020 and ending on April 8, 2025 (the "CALIFORNIA CLASS PERIOD").

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

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

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

10 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
11 CLASS Members is impracticable.

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

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

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

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

26 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
27 that the joinder of all such persons is impracticable and the disposition of
28 their claims as a class will benefit the parties and the Court;

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

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

- 26 (a) Without class certification and determination of declaratory, injunctive,
27 statutory and other legal questions within the class format, prosecution of
28

1 separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

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

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

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

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

25 (c) Common questions of law and fact exist as to the members of the
26 CALIFORNIA CLASS, with respect to the practices and violations of
27 California law as listed above, and predominate over any question
28 affecting only individual CALIFORNIA CLASS Members, and a Class

1 Action is superior to other available methods for the fair and efficient
2 adjudication of the controversy, including consideration of:

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

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

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

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

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of
3 the CALIFORNIA 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 and
21 Eighth causes Action on behalf of a California sub-class, defined as all members of the
22 CALIFORNIA CLASS who are or previously were employed by DEFENDANT who were
23 classified as non exempt in the State of California (the "CALIFORNIA LABOR SUB-CLASS")
24 at any time during the period beginning February 23, 2021 and ending on April 8, 2025 (the
25 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.

26 41. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
27 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
28 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed

1 to correctly calculate compensation for the time worked by PLAINTIFF and the other members
2 of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these
3 employees, even though DEFENDANT enjoyed the benefit of this work, required employees
4 to perform this work and permitted or suffered to permit this work. DEFENDANT has denied
5 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
6 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
7 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
8 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
9 accordingly.

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

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

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

- 19 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
20 compensation due to members of the CALIFORNIA LABOR SUB-
21 CLASS for missed meal and rest breaks in violation of the California
22 Labor Code and California regulations and the applicable California Wage
23 Order;
- 24 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS with accurate
26 itemized wage statements;
- 27 (c) Whether DEFENDANT has engaged in unfair competition by the
28 above-listed conduct;

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

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

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

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

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

14 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
15 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
16 itemized statement in writing showing the corresponding correct amount
17 of wages earned by the employee;

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

22 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
23 when an employee is discharged or quits from employment, the employer
24 must pay the employee all wages due without abatement, by failing to
25 tender full payment and/or restitution of wages owed or in the manner
26 required by California law to the members of the CALIFORNIA LABOR
27 SUB-CLASS who have terminated their employment; and,
28

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

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

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

1 representative PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
4 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

27 (c) Common questions of law and fact predominate as to the members of the
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and

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

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

1 Action is the only means to assert their claims through a
2 representative; and,

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

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

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

1 damages and injuries which DEFENDANT's actions have inflicted upon
2 the CALIFORNIA LABOR SUB-CLASS;

3 (f) There is a community of interest in ensuring that the combined assets of
4 DEFENDANT are sufficient to adequately compensate the members of
5 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

6 (g) DEFENDANT has acted or refused to act on grounds generally applicable
7 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
8 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
9 CLASS as a whole;

10 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
11 ascertainable from the business records of DEFENDANT. The
12 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
13 CLASS Members who worked for DEFENDANT in California at any
14 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

15 (i) Class treatment provides manageable judicial treatment calculated to bring
16 a efficient and rapid conclusion to all litigation of all wage and hour
17 related claims arising out of the conduct of DEFENDANT as to the
18 members of the CALIFORNIA LABOR SUB-CLASS.

19
20 **FIRST CAUSE OF ACTION**

21 **For Unlawful Business Practices**

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

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

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

27 50. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
28 Code § 17021.

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

5 Any person who engages, has engaged, or proposes to engage in unfair
6 competition may be enjoined in any court of competent jurisdiction. The court
7 may make such orders or judgments, including the appointment of a receiver, as
8 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.

9 Cal. Bus. & Prof. Code § 17203.

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

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

24 54. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT’s policy and practice failed to provide the legally mandated
26 meal and rest periods, the required amount of compensation for missed meal and rest periods
27 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
28 all necessary business expenses incurred, and failed to provide Fair Labor Standards Act

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

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

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

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

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

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

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

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

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

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

22
23 **SECOND CAUSE OF ACTION**

24 **For Failure To Pay Minimum Wages**

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

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

27 **and Against All Defendants)**

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

4 65. 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
7 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
8 Members.

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

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

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

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

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

25 71. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately calculated the correct time worked and consequently underpaid the actual time
27 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
28 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other

1 benefits in violation of the California Labor Code, the Industrial Welfare Commission
2 requirements and other applicable laws and regulations.

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

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

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

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

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

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

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

15
16 **THIRD CAUSE OF ACTION**

17 **For Failure To Pay Overtime Compensation**

18 **[Cal. Lab. Code § 510]**

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

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

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

1 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
2 workweek.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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

7
8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 99. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-

1 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
2 Order, one additional hour of compensation at each employee's regular rate of pay for each
3 workday that rest period was not provided.

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

8 9 **SIXTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 226]**

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

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

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

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

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

21 104. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
22 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
23 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended
24 calculating the correct wages for all missed meal and rest breaks and the amount of employment
25 taxes which were not properly paid to state and federal tax authorities. These damages are
26 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
28 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each

1 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
2 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
3 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

4
5 **SEVENTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code § 2802]**

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

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

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

14 An employer shall indemnify his or her employee for all necessary expenditures
15 or losses incurred by the employee in direct consequence of the discharge of his
16 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.

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

1 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
2 waiver of this expectation. Although these expenses were necessary expenses incurred by
3 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to
4 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
5 for these expenses as an employer is required to do under the laws and regulations of California.

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

10
11 **EIGHTH CAUSE OF ACTION**

12 **For Failure to Pay Sick Pay Wages**

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

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

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

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

1 employee's total hours worked in the full pay periods of the prior 90 days of employment."
2 Under Cal Lab. Code §§ 218 and 233, employees may sue to recover underpaid sick pay wages
3 as damages.

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

16 112. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick leave,
17 vested sick pay wages are due and to be paid no later than the payday for the next regular
18 payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code §
19 201 provides that if an employer discharges an employee, wages earned and unpaid at the time
20 of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an employee
21 is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her
22 employment, unless the employee has given 72-hour notice of his or her intention to quit, in
23 which case the employee is entitled to his or her wages at the time of quitting. The Labor Code
24 penalizes untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
25 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
26 wages of the employee shall continue as a penalty from the due date, and at the same rate until
27 paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal. Lab. Code
28

§ 210 provides penalties for untimely payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may sue to recover applicable penalties.

113. As alleged herein and as a matter of policy and practice, DEFENDANT routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 210, 233, and 246, among other Labor Code provisions. PLAINTIFF is informed and believes that DEFENDANT was advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable penalties.

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

NINTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

116. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the

1 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
2 fundamentally a law enforcement action designed to protect the public and not to benefit private
3 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
4 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
5 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
6 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
7 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
8 subject to arbitration.

9 117. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, brings this Representative Action on behalf of the State of California with respect to
12 himself and all non-exempt employees who worked for DEFENDANT in the State of California
13 ("AGGRIEVED EMPLOYEES") during the time period of October 18, 2022 until April 7,
14 2025 (the "PAGA PERIOD").

15 118. On October 18, 2023, PLAINTIFF gave written notice by electronic mail to the
16 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
17 employer of the specific provisions of this code alleged to have been violated as required by
18 Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein
19 (*PAGA Notice only without draft complaint*). The statutory waiting period for PLAINTIFF to
20 add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
21 PLAINTIFF may pursue a representative civil action under PAGA pursuant to Section 2699 as
22 the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
23 defined.

24 119. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
26 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
27 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
28 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required

1 expenses, (f) failed to provide wages when due, and (g) failed to provide suitable seating, all
2 in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
3 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
4 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
5 California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and
6 the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
7 conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
8 Private Attorney General Act of 2004 as the representative of the State of California for the
9 illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

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

15 16 **PRAYER FOR RELIEF**

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

19 1. On behalf of the CALIFORNIA CLASS:

- 20 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
22 B) An order temporarily, preliminarily and permanently enjoining and restraining
23 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
24
25
26

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

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS; and,
4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

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

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

4. On all claims:

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

Dated: June 27, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

DEMAND FOR A JURY TRIAL

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

Dated: June 27, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman B. Blumenthal

Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiff