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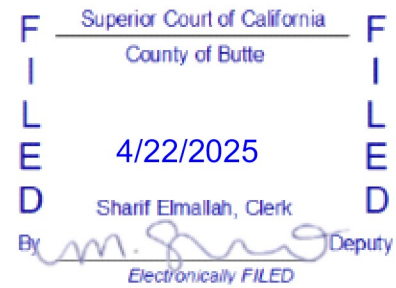
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF BUTTE

CHRISTIAN LOVGREN and GINA CUNEO,
individuals, on behalf of themselves, and on behalf of
all persons similarly situated, and on behalf of the State
of California, as private attorneys general,

Plaintiffs,

vs.

ENLOE MEDICAL CENTER, a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CV00200

**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 Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203;
9. Failure to Pay Sick Pay Wages in Violation of Cal. Lab. Code §§ 201-203, 233, 246;
10. Discrimination and Retaliation Violation of FEHA;
11. Constructive Discharge and Other Adverse Employment Actions in Violation of Public Policy; and
12. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

Demand for a Jury Trial

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

5
6 **THE PARTIES**

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

9 2. DEFENDANT offers an array of health care services from its 298 bed hospital.

10 3. Plaintiff Lovgren was employed by DEFENDANT in California from October
11 of 2008 to March of 2023. Plaintiff Lovgren was at all times classified by DEFENDANT as
12 a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and
13 rest periods and payment of minimum and overtime wages due for all time worked.

14 4. Plaintiff Cuneo has been employed by DEFENDANT in California since April
15 of 2018. Plaintiff Cuneo was at all times classified by DEFENDANT as a non-exempt
16 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
17 payment of minimum and overtime wages due for all time worked.

18 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
19 class, defined as all individuals who are or previously were employed by DEFENDANT who
20 were classified as non-exempt in the State of California (the “CALIFORNIA CLASS”) from
21 October 1, 2022 to the earlier of preliminary approval or April 30, 2025 (the “CALIFORNIA
22 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
23 CLASS Members is under five million dollars (\$5,000,000.00).

24 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
25 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
26 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and
27 practice which failed to lawfully compensate these employees. DEFENDANT's policy and
28 practice alleged herein was an unlawful, unfair and deceptive business practice whereby

1 DEFENDANT retained and continues to retain wages due to PLAINTIFFS and the other
2 members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
4 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS
5 who have been economically injured by DEFENDANT's past and current unlawful conduct, and
6 all other appropriate legal and equitable relief.

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

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

24 **THE CONDUCT**

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

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

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

25 11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
26 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
27 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
28 performance for DEFENDANT. The non-discretionary incentive program provided all

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

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

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

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

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

1 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
2 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

1 for each failure to pay each employee, plus 25 percent of the amount unlawfully
2 withheld.

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

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

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

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

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

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

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

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

1 unreimbursed business expenses which included, but were not limited to, costs related to the use
2 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

8 26. DEFENDANT knew or should have known that PLAINTIFFS and other
9 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
10 not interfere with the performance of their duties, and that DEFENDANT did not provide
11 suitable seating and/or did not allow them to sit when it did not interfere with the performance
12 of their duties.

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

21 28. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
22 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage
23 Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due
24 to PLAINTIFFS. DEFENDANT did not have a policy or practice which provided timely off-
25 duty meal and rest breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for
26 PLAINTIFFS' missed meal and rest breaks. The nature of the work performed by the
27 PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS' duties
28 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide

1 PLAINTIFFS with the legally required meal periods is evidenced by DEFENDANT's business
2 records. The amount in controversy for PLAINTIFFS individually does not exceed the sum or
3 value of \$75,000.

4 **JURISDICTION AND VENUE**

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

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

14 **THE CALIFORNIA CLASS**

15 31. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
16 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
17 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
18 all individuals who are or previously were employed by DEFENDANT who were classified as
19 non-exempt in the State of California (the "CALIFORNIA CLASS") from October 1, 2022 to
20 the earlier of preliminary approval or April 30, 2025 (the "CALIFORNIA CLASS PERIOD").
21 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under
22 five million dollars (\$5,000,000.00).

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

26 33. DEFENDANT, as a matter of company policy, practice and procedure, and in
27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
28

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
3 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
4 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
5 permits or suffers to permit this work.

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

15 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 36. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
18 law by:

- 19 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
20 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
21 deceptively having in place company policies, practices and procedures
22 that failed to record and pay PLAINTIFFS and the other members of the
23 CALIFORNIA CLASS for all time worked, including minimum wages
24 owed and overtime wages owed for work performed by these employees;
25 and,
26 (b) Committing an act of unfair competition in violation of the UCL, by
27 failing to provide the PLAINTIFFS and the other members of the
28 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

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

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

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

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

21 1) With respect to the First Cause of Action, the final relief on behalf
22 of the CALIFORNIA CLASS sought does not relate exclusively to
23 restitution because through this claim PLAINTIFFS seek
24 declaratory relief holding that the DEFENDANT's policy and
25 practices constitute unfair competition, along with declaratory
26 relief, injunctive relief, and incidental equitable relief as may be
27
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necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

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

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

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

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

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

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

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

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

23 **THE CALIFORNIA LABOR SUB-CLASS**

24 41. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
25 Eighth, Ninth and Tenth causes Action on behalf of a California sub-class, defined as all
26 members of the CALIFORNIA CLASS who are or previously were employed by
27 DEFENDANT who were classified as non-exempt in the State of California (the
28 "CALIFORNIA LABOR SUB-CLASS") from October 1, 2022 to the earlier of preliminary

1 approval or April 30, 2025 (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant
2 to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
3 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

21 44. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
22 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 25 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
26 compensation due to members of the CALIFORNIA LABOR SUB-
27 CLASS for missed meal and rest breaks in violation of the California
28

Labor Code and California regulations and the applicable California Wage Order;

- (b) Whether DEFENDANT failed to provide the PLAINTIFFS 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.

46. 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 PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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;

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

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

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

1 identically harmed by the same unlawful, deceptive, and unfair
2 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a practical
27 matter be dispositive of the interests of the other members
28

not parties to the adjudication or substantially impair or
impede their ability to protect their interests;

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

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

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

(a) The questions of law and fact common to the CALIFORNIA LABOR
SUB-CLASS predominate over any question affecting only individual
CALIFORNIA LABOR SUB-CLASS Members;

(b) A Class Action is superior to any other available method for the fair and
efficient adjudication of the claims of the members of the CALIFORNIA
LABOR SUB-CLASS because in the context of employment litigation a
substantial number of individual CALIFORNIA LABOR SUB-CLASS
Members will avoid asserting their rights individually out of fear of
retaliation or adverse impact on their employment;

(c) The members of the CALIFORNIA LABOR SUB-CLASS are so
numerous that it is impractical to bring all members of the CALIFORNIA
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.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

8 51. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

10 52. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver, as
17 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.

18 Cal. Bus. & Prof. Code § 17203.

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

27 54. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
28 unfair in that these practices violate public policy, were immoral, unethical, oppressive,

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 55. By the conduct alleged herein, DEFENDANT's practices were deceptive and
6 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
7 meal and rest periods, the required amount of compensation for missed meal and rest periods
8 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
9 all necessary business expenses incurred, and failed to provide Fair Labor Standards Act
10 overtime wages due for overtime worked as a result of failing to include non-discretionary
11 incentive compensation into their regular rates of pay for purposes of computing the proper
12 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.
13 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
14 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
15 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

1 59. PLAINTIFFS further demand on behalf of themselves 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 60. By and through the unlawful and unfair business practices described herein,
5 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS 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 61. 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 62. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
16 to, and do, seek such relief as may be necessary to restore to them the money and property
17 which DEFENDANT has acquired, or of which PLAINTIFFS 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 63. PLAINTIFFS 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 64. PLAINTIFFS 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, PLAINTIFFS and
28 the 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 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

8 **and Against All Defendants)**

9 65. 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 66. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
14 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
15 to accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS
16 Members.

17 67. 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 68. 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 69. 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 70. DEFENDANT maintained a wage practice of paying PLAINTIFFS 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 PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS.

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

5 72. 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 PLAINTIFFS 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 73. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
12 PLAINTIFFS 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 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
15 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
16 Members to work without paying them for all the time they were under DEFENDANT's
17 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
19 they were entitled to, constituting a failure to pay all earned wages.

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

26 76. DEFENDANT knew or should have known that PLAINTIFFS 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 PLAINTIFFS and the other members
3 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

4 77. 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 PLAINTIFFS 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 78. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
14 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
15 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
16 wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
17 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
18 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
19 penalties 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, PLAINTIFFS 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 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
28 **Defendants)**

1 79. 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 80. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
5 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
6 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
7 to pay 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 81. 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 82. 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 83. 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 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS 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 85. DEFENDANT's unlawful wage and hour practices manifested, without
25 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
26 implementing a policy and practice that failed to accurately record overtime worked by
27 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
28 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-

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

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

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

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

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

1 failed to accurately record and pay as evidenced by DEFENDANT's business records and
2 witnessed by employees.

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

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

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

23 93. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
24 CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory
25 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
26 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
27 and/or overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-
28 CLASS Members who have terminated their employment, DEFENDANT's conduct also

1 violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
2 waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf
3 of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged
4 herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other
5 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

6
7 **FOURTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

15 95. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
16 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
17 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
18 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR
19 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
20 duties for the legally required off-duty meal periods. As a result of their rigorous work
21 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from
22 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
23 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
24 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
25 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
26 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period
27 in some workdays in which these employees were required by DEFENDANT to work ten (10)
28 hours of work from time to time. As a result, PLAINTIFFS and other members of the

1 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
2 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

8 97. As a proximate result of the aforementioned violations, PLAINTIFFS 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 **FIFTH CAUSE OF ACTION**

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

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

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

18 98. 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 99. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
22 from time to time required to work in excess of four (4) hours without being provided ten (10)
23 minute rest periods. Further, these employees from time to time were denied their first rest
24 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
25 a first and second rest period of at least ten (10) minutes for some shifts worked of between six
26 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
27 some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other
28 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages

1 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
2 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
3 periods by DEFENDANT and DEFENDANT's managers.

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

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

13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

21 103. 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
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare 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.

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

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

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

9
10 **SEVENTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 2802]**

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

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

18 107. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

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

16 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

25 As used in this article:

26 (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.

27 (b) "Labor" includes labor, work, or service whether rendered or
28 performed under contract, subcontract, partnership, station plan, or other

1 agreement if the labor to be paid for is performed personally by the person
2 demanding payment.

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

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

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

12 113. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR
13 SUB-CLASS Members’ employment contract.

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

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

19 115. The employment of Plaintiff Lovgren and many CALIFORNIA LABOR
20 SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all
21 wages owed as required by law. Additionally, at all times during the term of Plaintiff
22 Lovgren’s employment with DEFENDANT, Plaintiff Lovgren and CALIFORNIA LABOR
23 SUB-CLASS Members earned and accrued vested vacation and holiday time on the date of
24 their termination pursuant to DEFENDANT’s uniform vacation policies and applicable
25 California law. The amount of vacation pay Plaintiff Lovgren and the other CALIFORNIA
26 LABOR SUB-CLASS Members earned and accumulated is evidenced by DEFENDANT's
27 business records. Additionally, DEFENDANT also underpaid accrued vested vacation
28 wages to Plaintiff Lovgren and other CALIFORNIA LABOR SUB-CLASS MEMBERS by

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

27 116. Therefore, as provided by Cal Lab. Code § 203, on behalf of Plaintiff Lovgren
28 and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has

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

6
7 **NINTH CAUSE OF ACTION**

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

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

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

11 **and Against All Defendants)**

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

15 118. Cal Lab. Code § 233 provides that an employer must permit an employee to
16 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
17 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
18 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
19 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
20 right to sick pay wages, which an employer must calculate and compensate based on one of
21 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
22 same manner as the regular rate of pay for the workweek in which the employee uses paid
23 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
24 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
25 total wages, not including overtime premium pay, by the employee's total hours worked in
26 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
27 233, employees may sue to recover underpaid sick pay wages as damages.

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

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

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

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

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

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

18 19 **TENTH CAUSE OF ACTION**

20 **[Discrimination and Retaliation For the Exercise of Rights Guaranteed Under the**
21 **FEHA, Participating in Protected Activities, and/or Opposing DEFENDANT's Failure**
22 **to Provide Such Rights]**

23 **Violation of FEHA Government Section 12900, et. seq.**

24 **(By Plaintiff Lovgren Only Against All Defendants)**

25 123. PLAINTIFFS reallege and incorporate by reference, as though fully set forth
26 herein, the prior paragraphs of this Complaint. Prior to filing this action Plaintiff Lovgren
27 exhausted his administrative remedies by filing a timely administrative complaint with the
28

1 Department of Fair Employment and Housing (“DFEH”) and received a DFEH Right to Sue
2 letter on December 8, 2023.

3 124. Throughout 2022 and 2023, Plaintiff Lovgren informed DEFENDANT, and
4 specifically Plaintiff Lovgren’s direct supervisor, the inpatient pharmacy department
5 director, human resources, and Risk and Compliance personnel about being sexually
6 harassed and discriminated against due to his gender at work by co-workers and being
7 verbally harassed on a weekly basis by other employees of DEFENDANT, but to no avail.
8 Plaintiff Lovgren reported the verbal and sexual harassment, which included but was not
9 limited to one of his co-workers smearing lotion on his body consistently, making lewd
10 gestures and verbally harassing Plaintiff Lovgren with forms of gender discrimination.
11 Continuing through out the rest of Plaintiff Lovgren’s employment, Plaintiff Lovgren
12 engaged in protected activity by complaining to DEFENDANT of DEFENDANT’s failure
13 to provide a safe working environment free of sexual and gender harassment in order to
14 accommodate the best interests of DEFENDANT itself. As a direct consequence of Plaintiff
15 Lovgren’s complaints to DEFENDANT, DEFENDANT retaliated against Plaintiff Lovgren
16 by denying Plaintiff Lovgren employment opportunities and promotions which resulted in
17 lost wages and harassing Plaintiff Lovgren with unreasonable working demands. As a
18 result, there is a causal link between the protected activity and DEFENDANT’s decision to
19 retaliate against Plaintiff Lovgren, which is against public policy. Left with no other choice,
20 on or around March 1, 2023, Plaintiff Lovgren made the decision to resign from Plaintiff
21 Lovgren’s employment due to the hostile environment described above and DEFENDANT’s
22 failure to take Plaintiff Lovgren’s complaints seriously.

23 125. DEFENDANT’s conduct, as alleged, violated FEHA, Government Code
24 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
25 including the following bases for liability:

26 a. Taking adverse employment actions against Plaintiff Lovgren,
27 including paying lower wages, barring, refusing to transfer, retain, hire, select, and/or
28 employ, and/or otherwise discriminating against Plaintiff Lovgren, in whole or in part on the

1 basis of Plaintiff Lovgren's gender and good faith complaints regarding sexual harassment
2 in violation of Government Code Section 12940(a);

3 b. Harassing Plaintiff Lovgren and/or creating a hostile work
4 environment, in whole or in part on the basis of Plaintiff Lovgren's gender and complaints
5 about sexual harassment;

6 c. Failing to take all reasonable steps to prevent discrimination and
7 harassment based on gender/sexual harassment reporting in violation of Government Code
8 section 12940(k);

9 d. Retaliating against Plaintiff Lovgren for seeking to exercise rights
10 guaranteed under FEHA, participating in protected activities, and/or opposing
11 DEFENDANT's failure to provide such rights, in violation of Government Code Section
12 12940(h).

13 126. As a result of the good faith complaints Plaintiff Lovgren made to
14 DEFENDANT regarding the discriminatory practices stated above and also as a result of
15 Plaintiff Lovgren's gender, DEFENDANT paid Plaintiff Lovgren lower wages, and in direct
16 retaliation for those complaints, DEFENDANT denied Plaintiff Lovgren employment
17 benefits, including but not limited to, higher wages in his position with the company.

18 127. As a proximate result of DEFENDANT's willful, knowing, and intentional
19 discrimination against Plaintiff Lovgren, Plaintiff Lovgren has sustained and continues to
20 sustain substantial losses of earnings and other employment benefits.

21 128. As a proximate result of DEFENDANT's willful, knowing, and intentional
22 discrimination against Plaintiff Lovgren, Plaintiff Lovgren has suffered and continues to
23 suffer humiliation, emotional distress, and physical and mental pain and anguish, all to
24 Plaintiff Lovgren's damage in a sum according to proof.

25 129. Plaintiff Lovgren has incurred and continues to incur legal expenses and
26 attorneys' fees. Pursuant to Government Code Section 12965(b), Plaintiff Lovgren is
27 entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount
28 according to proof.

130. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling Plaintiff Lovgren to punitive damages against DEFENDANT.

ELEVENTH CAUSE OF ACTION

Constructive Discharge and Other Adverse Employment Actions

(By Plaintiff Lovgren Only Against All Defendants)

131. PLAINTIFFS reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

132. As a direct consequence of Plaintiff Lovgren's complaints to DEFENDANT, DEFENDANT retaliated against Plaintiff Lovgren by denying Plaintiff Lovgren employment opportunities and promotions which resulted in lost wages and harassing Plaintiff Lovgren with unreasonable working demands. As a result, there is a causal link between the protected activity and DEFENDANT's decision to retaliate against Plaintiff Lovgren, which is against public policy. Left with no other choice, on or around March 30, 2023, Plaintiff Lovgren made the decision to resign from his employment due to the hostile environment described above and DEFENDANT's failure to take his complaints seriously.

133. Subsequent to Plaintiff Lovgren's participation in protective activity by complaining to Plaintiff Lovgren's managers about the unlawful employment practices, DEFENDANT subjected Plaintiff Lovgren to adverse employment actions by retaliating against Plaintiff Lovgren. Specifically, after Plaintiff Lovgren complained to his supervisor(s) of DEFENDANT's unlawful employment practices in February and March of 2023, Plaintiff Lovgren's working environment became unbearable and impossible to return to. Plaintiff Lovgren's managers continuously harassed him by giving him unreasonable working demands. During this time, Plaintiff Lovgren was plagued with ongoing work pressures, obligations, and mistreatment by his supervisors, including but not limited to, belittling and making false accusations about Plaintiff Lovgren's performance. As a result, there is a causal link between the protected activity and DEFENDANT's decision to

1 retaliate against Plaintiff Lovgren, which is against public policy. As a direct consequence
2 of Plaintiff Lovgren's complaints to DEFENDANT, DEFENDANT retaliated against
3 Plaintiff Lovgren by taking adverse employment actions described herein.

4 134. Left with no other choice, on or around March 30, 2022, Plaintiff Lovgren
5 made the decision to resign from his employment due to the hostile environment described
6 above and DEFENDANT's failure to take his complaints seriously.

7 135. Plaintiff Lovgren raised complaints of illegality while Plaintiff Lovgren
8 worked for DEFENDANT and was believed to be willing to raise complaints, and
9 DEFENDANT retaliated against Plaintiff Lovgren by taking adverse employment actions
10 against Plaintiff Lovgren

11 136. As a proximate result of DEFENDANT'S willful, knowing, and intentional,
12 conduct, Plaintiff Lovgren has suffered and continues to suffer humiliation, emotional
13 distress, and mental and physical pain and anguish, all to Plaintiff Lovgren's damage in a
14 sum according to proof.

15 137. As a result of DEFENDANT'S adverse employment actions against Plaintiff
16 Lovgren, Plaintiff Lovgren has suffered general and special damages in sums according to
17 proof.

18 138. DEFENDANT's misconduct was committed intentionally, in a malicious,
19 oppressive manner, and fraudulent manner entitling Plaintiff Lovgren to punitive damages.

20 **TWELFTH CAUSE OF ACTION**

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

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

23 **(By PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES and Against All**
24 **Defendants)**

25 139. PLAINTIFFS reallege and incorporate by this reference, as though fully set
26 forth herein, the prior paragraphs of this Complaint.

27 140. PAGA is a mechanism by which the State of California itself can enforce state
28 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.

9 142. PLAINTIFFS, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, bring this Representative Action on behalf of the State of California with respect to
12 themselves and all individuals who are or were employed by DEFENDANT who were
13 classified as non-exempt in the State of California ("AGGRIEVED EMPLOYEES") from
14 December 6, 2022 to the earlier of preliminary approval or April 30, 2025 (the "PAGA
15 PERIOD").

16 143. On December 6, 2023, PLAINTIFFS gave written notice by electronic mail to the
17 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
18 employer of the specific provisions of this code alleged to have been violated as required by
19 Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein
20 (*PAGA Notice only without draft complaint*). The statutory waiting period for PLAINTIFFS to
21 add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
22 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to
23 Section 2699 as the proxies of the State of California with respect to all AGGRIEVED
24 EMPLOYEES as herein defined.

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

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

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

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
19 severally, as follows:

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

27 ¹Plaintiffs specifically exclude and/or do 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 PLAINTIFFS 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 PLAINTIFFS 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, Eighth,
9 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
10 CLASS as a class 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 PLAINTIFFS and the
13 other members of the CALIFORNIA LABOR SUB-CLASS, during the
14 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
15 at the 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 PLAINTIFFS and each member of the
26 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
27 plus interest, and costs of suit.; and,
28

- 1 G) The wages of all terminated employees in the CALIFORNIA LABOR
2 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
3 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 4 3. On behalf of Plaintiff Lovgren for the Tenth and Eleventh Causes of Action:
- 5 A) For all special damages which were sustained as a result of DEFENDANT's
6 conduct, including, but not limited to, back pay, front pay, lost compensation and
7 job benefits that PLAINTIFF would have received but for the retaliatory practices
8 of DEFENDANT; and,
- 9 B) For all exemplary damages, according to proof, which were sustained as a result
10 of DEFENDANT's conduct.
- 11 4. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES:
- 13 A) Recovery of civil penalties as prescribed by the Labor Code Private
14 Attorneys General Act of 2004; and,
- 15 B) An award of attorneys' fees and cost of suit, as allowable under the
16 law, including, but not limited to, pursuant to Labor Code §2699.
- 17 5. On all claims:
- 18 A) An award of interest, including prejudgment interest at the legal rate;
- 19 B) Such other and further relief as the Court deems just and equitable; and,
- 20 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
21 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
22 and/or §2802.

23 Dated: April 22, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

28 *Attorneys for Plaintiffs*

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DEMAND FOR A JURY TRIAL

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

Dated: April 22, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

Attorneys for Plaintiffs

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

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WRITERS EXT:

1004

December 6, 2023

CA2969

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Enloe Medical Center
Certified Mail #9589071052701316528186
MICHAEL WILTERMOOD
1531 ESPLANADE
CHICO, CA 95926

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 Enloe Medical Center in California, including any employees staffed with Enloe Medical Center by a third party, and classified as non-exempt employees during the time period of December 6, 2022 until a date as determined by the Court. Our offices represent Plaintiffs Christian Lovgren and Gina Cuneo (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against Enloe Medical Center (“Defendant”). Plaintiff Lovgren was employed from 2008 to March of 2023 by Defendant in California. Plaintiff Cuneo has been employed since April of 2018 by Defendant in California. Plaintiffs were at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed

to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.