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9 Individually and on behalf of all other similarly situated

ELECTRONICALLY FILED

Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By G. Lopez ,Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SAN DIEGO**

12 LUIS ZENDEJAS, an individual, on behalf
13 of himself and on behalf of all persons
14 similarly situated,

15 Plaintiffs,

16 v.

17 PORTILLO CONCRETE, INC., a
18 California Corporation; and DOES 1-50,
19 Inclusive,

20 Defendant(s).

Case No. 25CU001198C

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 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) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.; and

1 **DEMAND FOR JURY TRIAL**

2
3 Plaintiff LUIS ZENDEJAS (“PLAINTIFF”), an individual, on behalf of himself and all
4 other similarly situated current and former employees, alleges on information and belief,
5 except for his own acts and knowledge which are based on personal knowledge, the
6 following:

7 **PRELIMINARY ALLEGATIONS**

8 1. Defendant PORTILLO CONCRETE, INC. (“DEFENDANT” or
9 “DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein
10 conducted and continues to conduct substantial and regular business in California.

11 2. DEFENDANT provides concrete services to residential and commercial
12 properties.

13 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
14 employee entitled to minimum wages, accurate wage statements, overtime pay and meal
15 and rest periods from 2017 to July 19, 2024. PLAINTIFF was at all times relevant
16 mentioned herein classified by DEFENDANT as a non-exempt employee paid in whole or
17 in part on an hourly basis and entitled to the legally required meal and rest periods and
18 payment of minimum and overtime wages due for all the time worked. DEFENDANT as
19 a non-exempt employee is also entitled to accurate itemized wage statements.

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

27 5. PLAINTIFF brings this Class Action on behalf of himself and a
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s

uniform policy and practice which failed to lawfully compensate these employees for all their time worked, including overtime worked. DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

THE CONDUCT

1 8. Pursuant to the Industrial Welfare Commission Wage Orders,
2 DEFENDANT is required to pay PLAINTIFF and the CALIFORNIA CLASS Members
3 for all their time worked, meaning the time during which an employee is subject to the
4 control of an employer, including all the time the employee is suffered or permitted to
5 work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA
6 CLASS Members to work without paying them for all the time they were under
7 DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work
8 while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break, as
9 well as before his shift started and after his shift ended. DEFENDANT required
10 PLAINTIFF and the CALIFORNIA CLASS Members to work off the clock without
11 paying them for all the time they performed duties while on their meal break, specifically
12 by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT
13 expected PLAINTIFF and the CALIFORNIA CLASS Members to complete on a daily
14 and/or weekly basis. From time to time, PLAINTIFF was also often interrupted by work
15 assignments during his breaks. Indeed there were many days where PLAINTIFF did not
16 even receive a partial meal break. PLAINTIFF and other CALIFORNIA CLASS
17 Members are not paid for their work time putting on their work gear because they are not
18 paid until they are ready to work prior to their shift. Finally, PLAINTIFF and other
19 members of the CALIFORNIA CLASS from time to time were not paid wages for all the
20 time worked, including overtime wages, such that in the aggregate employees were
21 underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding
22 time worked by its employees. DEFENDANTS also underpaid sick pay wages to
23 PLAINTIFFS and other CALIFORNIA CLASS MEMBERS by failing to pay such wages
24 at the regular rate of pay. Rather, than pay sick pay at the regular rate of pay,
25 DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
26 MEMBERS at their base rates of pay. As a result, PLAINTIFF and other California
27 CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal
28 breaks by working without their time being correctly recorded and without compensation

1 at the applicable rates. As a result, the PLAINTIFF and other CALIFORNIA CLASS
2 Members, from time to time, forfeited minimum wage and overtime compensation by
3 working without their time being accurately recorded and without compensation at the
4 applicable minimum wage and overtime rates. DEFENDANT’S uniform policy and
5 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
6 worked is evidenced by DEFENDANT’S business records.

7 9. State and Federal law provides that employees must be paid overtime at one-
8 and-one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA
9 CLASS Members are compensated at an hourly rate plus incentive pay that is tied to
10 specific elements of an employee’s performance.

11 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in
12 place an immutable timekeeping system to accurately record and pay PLAINTIFF and
13 other CALIFORNIA CLASS Members for the actual time these employees worked each
14 day, including overtime hours. As a result, DEFENDANT was able to and did in fact
15 unlawfully, and unilaterally alter the time recorded in DEFENDANT’s timekeeping
16 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
17 paying these employees the applicable overtime compensation for overtime worked and to
18 avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and other
19 CALIFORNIA CLASS Members, from time to time, forfeited time worked by working
20 without their time being accurately recorded and without compensation at the applicable
21 overtime rates.

22 11. The mutability of the timekeeping system also allowed DEFENDANT to
23 alter employee time records by recording fictitious thirty (30) minute meal breaks in
24 DEFENDANT’s timekeeping system so as to create the appearance that PLAINTIFF and
25 other CALIFORNIA CLASS Members clocked out for a thirty (30) minute meal break
26 when in fact the employees were not at all times provided an off-duty meal break. This
27 practice is a direct result of DEFENDANTS’ uniform policy and practice of denying
28

1 employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
2 compensate them for missed meal breaks

3 12. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
5 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
6 CALIFORNIA CLASS Members were required to perform work as ordered by
7 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
8 meal break. PLAINTIFF has to keep his radio and his cell phone on him at all times.
9 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
10 Members with a second off-duty meal period each workday in which these employees were
11 required by DEFENDANT to work ten (10) hours of work. From time to time, when a
12 meal break was provided, PLAINTIFF was required to remain on DEFENDANT's
13 premises, on-call and on-duty, and was interrupted with work. PLAINTIFF and the other
14 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
15 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

16 13. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF
17 and other CALIFORNIA CLASS Members were also required to work in excess of four
18 (4) hours without being provided ten (10) minute rest periods. Further, these employees
19 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
20 least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for
21 some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest
22 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
23 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one
24 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and
25 other CALIFORNIA CLASS Members were periodically denied their proper rest periods
26 by DEFENDANT and DEFENDANT's managers. Additionally, the applicable California
27 Wage Order requires employers to provide employees with off-duty rest periods, which
28 the California Supreme Court defined as time during which an employee is relieved from

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

11 14. When PLAINTIFF and other CALIFORNIA CLASS Members were not
12 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANT also
13 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
14 complete and accurate wage statements which failed to show, among other things, the time
15 worked, including, work performed in excess of eight (8) hours in a workday and/or forty
16 (40) hours in any workweek, and the correct penalty payments or missed meal and rest
17 periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
18 employees with an accurate itemized wage statement in writing showing, among other
19 things, gross wages earned and all applicable hourly rates in effect during the pay period
20 and the corresponding amount of time worked at each hourly rate. Aside, from the
21 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
22 itemized wage statement that lists all the requirements under California Labor Code 226
23 *et seq.*, As a result, from time-to-time DEFENDANT provided PLAINTIFF and the other
24 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
25 Code § 226.

26 15. By reason of this uniform conduct applicable to PLAINTIFF and all
27 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
28 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*

1 *seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
2 accurately calculate and record the correct time and overtime for the time worked by
3 PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
4 employees’ time is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional
5 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate
6 and/or pay all required compensation for work performed by the members of the
7 CALIFORNIA CLASS and violated the California Labor Code and regulations
8 promulgated thereunder as herein alleged.

9 16. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT
11 as a matter of company policy, practice and procedure, intentionally and knowingly failed
12 to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
13 missed meal and rest periods. This uniform policy and practice of DEFENDANT is
14 intended to purposefully avoid the payment for all time worked as required by California
15 law which allows DEFENDANT to illegally profit and gain an unfair advantage over
16 competitors who complied with the law. To the extent equitable tolling operates to toll
17 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
18 PERIOD should be adjusted accordingly.

19 17. By reason of this uniform conduct applicable to PLAINTIFF and all
20 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
21 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
22 *seq.* (the “UCL”), by engaging in a company-wide policy and procedure which failed to
23 accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
24 CALIFORNIA CLASS Members. The proper recording of these employees’ missed meal
25 and rest breaks is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional
26 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate
27 and/or pay all required compensation for work performed by the members of the
28

1 CALIFORNIA CLASS and violated the California Labor Code and regulations
2 promulgated thereunder as herein alleged.

3 18. Specifically, as to PLAINTIFF's pay, PLAINTIFF was from time to time
4 unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal
5 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more
6 than five (5) hours during a shift without receiving an off-duty meal break. Further,
7 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each
8 workday in which he was required by DEFENDANT to work ten (10) hours of work.
9 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and
10 in accordance with DEFENDANT's strict policy and practice. To date, DEFENDANT
11 have not fully paid PLAINTIFF the minimum wage and overtime compensation still owed
12 to his or any penalty wages owed to them under Cal. Lab. Code § 203.

13 **JURISDICTION AND VENUE**

14 19. This Court has jurisdiction over this Action pursuant to California Code of
15 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
16 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
17 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

18 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
19 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant
20 times maintained offices and facilities in this County and/or conducts substantial business
21 in this County, and (ii) committed the wrongful conduct herein alleged in this County
22 against members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-
23 CLASS.

24 **THE CALIFORNIA CLASS**

25 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
26 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
27 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
28 California class, defined as all individuals who are or previously were employed by

1 Defendant and/or Defendant in California and classified as non-exempt employees (the
2 “CALIFORNIA CLASS”) at any time between January 6, 2020 and the date as determined
3 by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the
4 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
5 (\$5,000,000.00).

6 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
7 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
8 accordingly.

9 23. The CALIFORNIA CLASS is so numerous that joinder of all
10 CALIFORNIA CLASS Members is impracticable.

11 24. DEFENDANT, as a matter of company policy, practice and procedure, and
12 in violation of the applicable Labor Code, Industrial Welfare Commissions (“IWC”) Wage
13 Order requirements, and the applicable provisions of California law, intentionally,
14 knowingly, and willfully, engages in practice whereby DEFENDANT fails to record all
15 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
16 even though DEFENDANT enjoys the benefit of this work, requires employees to perform
17 this work and permits or suffers to permit this work.

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

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

- 1 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
- 2 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
- 3 company policies, practices and procedures that failed to pay all wages due
- 4 the CALIFORNIA CLASS for all minimum wages and overtime worked.
- 5 b. Committing an act of unfair competition in violation of the California Unfair
- 6 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
- 7 provide mandatory meal and/or rest breaks to PLAINTIFF and the
- 8 CALIFORNIA CLASS members;
- 9 c. Committing an act of unfair competition in violation of the California Unfair
- 10 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating
- 11 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
- 12 CALIFORNIA CLASS Members with necessary expenses incurred in the
- 13 discharge of their job duties.

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

- 16 a. The persons who comprise the CALIFORNIA CLASS are so numerous that
- 17 the joinder of all such persons is impracticable and the disposition of their
- 18 claims as a class will benefit the parties and the Court;
- 19 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
- 20 that are raised in this Complaint are common to the CALIFORNIA CLASS
- 21 will apply uniformly to every member of the CALIFORNIA CLASS;
- 22 c. The claims of the representative PLAINTIFF are typical of the claims of
- 23 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other
- 24 members of the CALIFORNIA CLASS, was subjected to the uniform
- 25 employment practices of DEFENDANT and was a non-exempt employee
- 26 paid on an hourly basis and paid additional non-discretionary incentive
- 27 wages who was subjected to the DEFENDANT's practice and policy which
- 28 failed to pay the correct rate of overtime wages due to the CALIFORNIA

1 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
2 systematically under pays overtime compensation to the CALIFORNIA
3 CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members of
5 the CALIFORNIA CLASS were and are similarly or identically harmed by
6 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
7 engaged in by DEFENDANT; and

- 8 d. The representative PLAINTIFF will fairly and adequately represent and
9 protect the interest of the CALIFORNIA CLASS, and has retained counsel
10 who are competent and experienced in Class Action litigation. There are no
11 material conflicts between the claims of the representative PLAINTIFF and
12 the members of the CALIFORNIA CLASS that would make class
13 certification inappropriate. Counsel for the CALIFORNIA CLASS will
14 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

- 18 a. Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA CLASS will
21 create the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or;
- 26 ii. Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
28 dispositive of interests of the other members not party to the

1 adjudication or substantially impair or impede their ability to protect
2 their interests.

3 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act
4 on grounds generally applicable to the CALIFORNIA CLASS, making
5 appropriate class-wide relief with respect to the CALIFORNIA CLASS as a
6 whole in that DEFENDANT uniformly failed to pay all wages due, including
7 the correct overtime rate, for all time worked by the members of the
8 CALIFORNIA CLASS as required by law;

9 i. With respect to the First Cause of Action, the final relief on behalf of
10 the CALIFORNIA CLASS sought does not relate exclusively to
11 restitution because through this claim PLAINTIFF seek declaratory
12 relief holding that the DEFENDANT's policy and practices constitute
13 unfair competition, along with declaratory relief, injunctive relief,
14 and incidental equitable relief as may be necessary to prevent and
15 remedy the conduct declared to constitute unfair competition;

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

22 i. The interests of the members of the CALIFORNIA CLASS in
23 individually controlling the prosecution or defense of separate actions
24 in that the substantial expense of individual actions will be avoided
25 to recover the relatively small amount of economic losses sustained
26 by the individual CALIFORNIA CLASS Members when compared
27 to the substantial expense and burden of individual prosecution of this
28 litigation;

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

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

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

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

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

23 29. The Court should permit this action to be maintained as a Class Action
24 pursuant to Cal. Code of Civ. Proc. § 382 because:

25 a. The questions of law and fact common to the CALIFORNIA CLASS
26 predominate over any question affecting only individual CALIFORNIA
27 CLASS Members because the DEFENDANT's employment practices are
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1 uniform and systematically applied with respect to the CALIFORNIA
2 CLASS.

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

1 i. Class treatment provides manageable judicial treatment calculated to bring
2 an efficient and rapid conclusion to all litigation of all wage and hour related
3 claims arising out of the conduct of DEFENDANT as to the members of the
4 CALIFORNIA CLASS.

5 30. DEFENDANT maintains records from which the Court can ascertain and
6 identify by job title each of DEFENDANT's employees who as have been systematically,
7 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
8 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to
9 include any additional job titles of similarly situated employees when they have been
10 identified.

11 **THE CALIFORNIA LABOR SUB-CLASS**

12 31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
13 Eighth and Ninth Causes of Action on behalf of a California sub-class, defined as all
14 members of the CALIFORNIA CLASS classified as non-exempt employees (the
15 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning 4 years
16 before the filing of the complaint and ending on the date as determined by the Court (the
17 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. §
18 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
19 CLASS Members is under five million dollars (\$5,000,000.00).

20 32. DEFENDANT, as a matter of company policy, practice and procedure, and
21 in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
22 Order requirements, and the applicable provisions of California law, intentionally,
23 knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly
24 pay for all time worked by PLAINTIFF and the other members of the CALIFORNIA
25 LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work,
26 required employees to perform this work and permitted or suffered to permit this overtime
27 work. DEFENDANT have uniformly denied these CALIFORNIA LABOR SUB-CLASS
28 Members minimum and overtime wages at the correct amount to which these employees

1 are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent
2 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
3 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
4 adjusted accordingly.

5 33. DEFENDANT maintain records from which the Court can ascertain and
6 identify by name and job title, each of DEFENDANT's employees who have been
7 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,
8 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the
9 complaint to include any additional job titles of similarly situated employees when they
10 have been identified.

11 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
12 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 15 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
16 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
17 violation of the California Labor Code and California regulations and the
18 applicable California Wage Order;
- 19 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
20 entitled to overtime compensation for overtime worked under the overtime
21 pay requirements of California law;
- 22 c. Whether DEFENDANT failed to provide PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS with legally required
24 uninterrupted thirty (30) minute meal breaks and rest periods;
- 25 d. Whether DEFENDANT failed to provide PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS with accurate
27 itemized wage statements;

- e. Whether DEFENDANT have engaged in unfair competition by the above-listed conduct;
- f. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- g. Whether DEFENDANT's conduct was willful.

36. DEFENDANT, as a matter of company policy, practice, and procedure, failed to accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the time worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT according to uniform and systematic company procedures as alleged herein above. This business practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

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

- a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT are liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

- 1 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
3 itemized statement in writing showing time worked at by the employee;
- 4 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
5 an employee is discharged or quits from employment, the employer must
6 pay the employee all wages due without abatement, by failing to tender full
7 payment and/or restitution of wages owed or in the manner required by
8 California law to the members of the CALIFORNIA LABOR SUB-CLASS
9 who have terminated their employment.
- 10 f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
11 the CALIFORNIA LABOR SUB-CLASS members with necessary
12 expenses incurred in the discharge of their job duties.

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

- 15 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
16 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
17 Members is impracticable and the disposition of their claims as a class will
18 benefit the parties and the Court;
- 19 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
20 that are raised in this Complaint are common to the CALIFORNIA LABOR
21 SUB-CLASS and will apply uniformly to every member of the
22 CALIFORNIA LABOR SUB-CLASS;
- 23 c. The claims of the representative PLAINTIFF are typical of the claims of
24 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
25 like all the other members of the CALIFORNIA LABORSUB-CLASS, was
26 a non-exempt employee paid on an hourly basis and paid additional non-
27 discretionary incentive wages who was subjected to the DEFENDANT's
28 practice and policy which failed to pay the correct rate of overtime wages

1 due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked.
2 PLAINTIFF sustained economic injury as a result of DEFENDANT's
3 employment practices. PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUB-CLASS were and are similarly or identically harmed by the
5 same unlawful, deceptive, unfair and pervasive pattern of misconduct
6 engaged in by DEFENDANT; and

- 7 d. The representative PLAINTIFF will fairly and adequately represent and
8 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
9 retained counsel who are competent and experienced in Class Action
10 litigation. There are no material conflicts between the claims of the
11 representative PLAINTIFF and the members of the CALIFORNIA LABOR
12 SUB-CLASS that would make class certification inappropriate. Counsel for
13 the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims
14 of all CALIFORNIA LABOR SUB-CLASS Members.

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

- 18 a. Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA LABOR SUB-
21 CLASS will create the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA LABOR SUB-CLASS which would
24 establish incompatible standards of conduct for the parties opposing
25 the CALIFORNIA LABOR SUB-CLASS; or
- 26 ii. Adjudication with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS which would as a practical
28 matter be dispositive of interests of the other members not party to

1 the adjudication or substantially impair or impede their ability to
2 protect their interests.

3 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
4 or refused to act on grounds generally applicable to the CALIFORNIA
5 LABOR SUB-CLASS, making appropriate class-wide relief with respect to
6 the CALIFORNIA LABOR SUB-CLASS as a whole in that
7 DEFENDANTS uniformly failed to pay all wages due, including the correct
8 overtime rate, for all overtime worked by the members of the CALIFORNIA
9 LABOR SUB-CLASS as required by law;

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

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

23 ii. Class certification will obviate the need for unduly duplicative
24 litigation that would create the risk of:

25 1. Inconsistent or varying adjudications with respect to
26 individual members of the CALIFORNIA LABOR SUB-
27 CLASS, which would establish incompatible standards of
28 conduct for the DEFENDANTS; and/or,

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

iii. 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,

iv. 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.

40. 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;

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

28 **FIRST CAUSE OF ACTION**

UNLAWFUL BUSINESS PRACTICES
(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

42. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as 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. (Cal. Bus. & Prof. Code § 17203).

44. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 226(a), 210, 226.7, 510, 512, 558, 1194, 1197 & 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

45. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive

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

5 46. By the conduct alleged herein, DEFENDANT's practices were deceptive
6 and fraudulent in that DEFENDANT's uniform policy and practice failed to pay
7 PLAINTIFF, and other members of the CALIFORNIA CLASS, minimum wages, wages
8 due for overtime worked, and failed to provide the required amount of overtime
9 compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
10 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which
11 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
12 § 17203, including restitution of wages wrongfully withheld.

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

17 48. By the conduct alleged herein, DEFENDANT's practices were also unfair
18 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to
19 provide all legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
20 CLASS members as required by Cal. Lab. Code §§226.7 and 512.

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

26 50. PLAINTIFF further demands on behalf of himself and on behalf of each
27 CALIFORNIA CLASS member and CALIFORNIA LABOR SUB-CLASS, one (1) hour
28

1 of pay for each workday in which an off duty rest period rest period was not timely
2 provided as required by law.

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

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

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

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

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

1 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
2 continue to suffer irreparable legal and economic harm unless DEFENDANT are
3 restrained from continuing to engage in these unlawful and unfair business practices.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

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

8 **ALL Defendants)**

9 56. 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
11 prior paragraphs of this Complaint.

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

17 58. 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 59. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
20 the commission is the minimum wage to be paid to employees, and the payment of a wage
21 less than the minimum so fixed is unlawful.

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

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

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

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

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

16 65. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
17 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
18 worked than they were entitled to, constituting a failure to pay all earned wages.
19 DEFENDANT fails to accurately pay the PLAINTIFF and members of the CALIFORNIA
20 LABOR SUB-CLASS the wages for the time they work in accordance with 1197 &
21 1197.1, even though the PLAINTIFF and the other members of the CALIFORNIA
22 LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in fact
23 work, off the clock time as to which DEFENDANT fails to accurately record and pay as
24 evidence by DEFENDANT's business records and witnessed by employees.

25 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD DEFENDANT
26 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
27 Members to work without paying them for all the time they were under DEFENDANT'S
28 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for the time
2 worked that they were entitled to, constituting a failure to pay all earned wages.

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

9 68. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
11 time worked. DEFENDANTS systematically elected, either through intentional
12 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
13 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
14 systematic scheme by refusing to pay PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

25 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
27 statutory costs, as well as the assessment of any statutory penalties against
28 DEFENDANTS, in a sum as provided by the California Labor Code and/or other
applicable statutes. To the extent minimum wage compensation is determined to be owed

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME COMPENSATION**

10 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

11 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**
12 **ALL Defendants)**

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

16 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
17 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
18 California Labor Code and the Industrial Welfare Commission requirements for
19 DEFENDANT's failure to properly compensate the members of the CALIFORNIA
20 LABOR SUB-CLASS for all overtime worked, including, work performed in excess of
21 eight (8) hours in a workday and/or twelve (12) hours in a workday, and/or forty (40) hours
in any workweek.

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

24 74. Cal. Lab. Code § 510 further provides that employees in California shall not
25 be employed more than eight (8) hours per workday and/or more than forty (40) hours per
26 workweek unless they receive additional compensation beyond their regular wages in
27 amount specified by law.

1 75. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
2 wages, including reporting time pay and minimum wages and overtime compensation and
3 interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that
4 the employment of an employee for longer hours than those fixed by the Industrial Welfare
5 Commission is unlawful.

6 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
8 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
9 including overtime work.

10 77. DEFENDANT's uniform pattern of unlawful wage and hour practices
11 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as
12 a whole, as a result of implementing a uniform policy and practice that failed to accurately
13 record overtime worked by PLAINTIFF and the other members of the CALIFORNIA
14 LABOR SUB-CLASS, and denied accurate compensation to PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the
16 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a
workday, and/or forty (40) hours in any workweek.

17 78. In committing these violations of the California Labor Code, DEFENDANT
18 inaccurately records overtime worked and consequently underpays the overtime worked
19 by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members.
20 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
21 other benefits in violation of the California Labor Code, the Industrial Welfare
22 Commission requirements and other applicable laws and regulations.

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

1 80. As a direct result of DEFENDANT’S unlawful wage practices as alleged
2 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
3 did not receive full compensation for all overtime worked.

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

13 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
15 worked than they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

FOURTH CAUSE OF ACTION

1 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
2 **(Cal. Lab. Code §§ 226.7 & 512)**
3 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
4 **all Defendants)**

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

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

22 90. DEFENDANT further violated California Labor Code §§ 226.7 and the
23 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
24 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
25 the applicable Wage Order, one additional hour of compensation at each employee's
26 regular rate of pay for each workday that a meal period was not provided.

27 91. As a proximate result of the aforementioned violations, PLAINTIFF and
28 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount

1 according to proof at trial, and seek all wages earned and due, interest, penalties, expenses
2 and costs of suit.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

5 **(Cal. Lab. Code §§ 226.7 & 512)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against
all Defendants)**

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

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

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

26 95. As a proximate result of the aforementioned violations, PLAINTIFF and
27 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount
28

1 according to proof at trial, and seek all wages earned and due, interest, penalties, expenses
2 and costs of suit.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

5 **(Cal. Lab. Code § 226)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and against all Defendants)**

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

10 97. Cal. Labor Code § 226 provides that an employer must furnish employees
11 within “accurate itemized” statement in writing showing:

- 12 a. Gross wages earned;
- 13 b. Total hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from payment
15 of overtime under subdivision (a) of Section 515 or any applicable order of
16 the Industrial Welfare Commission;
- 17 c. The number of piece rate units earned and any applicable piece rate if the
18 employee is paid on a piece-rate basis;
- 19 d. All deductions, provided that all deductions made on written orders of the
20 employee may be aggregated and shown as one item;
- 21 e. Net wages earned;
- 22 f. The inclusive dates of the period for which the employee is paid;
- 23 g. The name of the employee and his or her social security number, except that
24 by January 1, 2008, only the last four digits of his or her social security
25 number or an employee identification number other than a social security
26 number may be shown on the itemized statement;
- 27 h. The name and address of the legal entity that is the employer; and
28

1 i. All applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.

3 98. When PLAINTIFF and other CALIFORNIA CLASS Members were not
4 paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed
5 to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
6 complete and accurate wage statements which failed to show, among other things, the
7 correct gross and net wages earned, including, work performed in excess of eight (8) hours
8 in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
9 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
10 furnish each of his or her employees with an accurate itemized wage statement in writing
11 showing, among other things, gross wages earned and all applicable hourly rates in effect
12 during the pay period and the corresponding amount of time worked at each hourly rate.
13 Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
14 itemized wage statement that lists all the requirements under California Labor Code 226
15 *et seq.* As a result, from time-to-time DEFENDANT provided PLAINTIFF and the other
16 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
17 Code § 226.

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

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

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

5 **(Cal. Lab. Code §2802)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
7 **all Defendants)**

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

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

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

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

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

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

8 **EIGHTH CAUSE OF ACTION**
9 **FAILURE TO PAY WAGES WHEN DUE**
10 **(Cal. Lab. Code §§201, 202, 203)**
11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
12 **all Defendants)**

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

15 105. Cal. Lab. Code § 200 provides, in relevant part, that:

16 As used in this article:

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

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

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

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

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

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

6 108. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
7 SUB-CLASS Members' employment contract.

8 109. Cal. Lab. Code § 203 provides:

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

15 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
16 CLASS Members terminated, and DEFENDANT have not tendered payment of overtime
17 wages, to these employees who actually worked overtime, as required by law.

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

24 **NINTH CAUSE OF ACTION**

25 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

26 **[Cal. Lab. Code §§ 2698 et seq.]**

27 **(Alleged by PLAINTIFF against all Defendants)**

28 112. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
herein, the prior paragraphs of this Complaint.

113. The Private Attorney General Act ("PAGA") is a mechanism by which the
State of California itself can enforce state labor laws through the employee suing under
the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies.

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

9 114. PLAINTIFF, and such persons that may be added from time to time who
10 satisfy the requirements and exhaust the administrative procedures under the Private
11 Attorney General Act, bring this Representative Action on behalf of the State of California
12 with respect to herself and all individuals who are or previously were employed by
13 DEFENDANT in California during the time period of November 1, 2023 until the present
14 (the "AGGRIEVED EMPLOYEES").

15 115. On November 1, 2024, PLAINTIFF, via counsel, sent the statutorily
16 required notice to the Labor and Workforce Development Agency (the "Agency").

17 116. On November 1, 2024, PLAINTIFF, via counsel, also sent via certified mail
18 a copy of the November 1, 2024, notice to DEFENDANT of the specific provisions of
19 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit
20 #1, attached hereto and incorporated by this reference herein. The statutory waiting period
21 for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
22 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action
23 under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
24 to all AGGRIEVED EMPLOYEES as herein defined. Therefore, PLAINTIFF has
25 exhausted the administrative requirements as required under PAGA.

26 117. The policies, acts and practices heretofore described were and are an
27 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
28 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and

1 rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
2 pay wages, (e) failed to pay earned wages in violation of the applicable Labor Code
3 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201,
4 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the
5 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result
6 of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
7 Labor Code Private Attorney General Act of 2004 as the representative of the State of
8 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
9 EMPLOYEES.

10 118. Some or all of the conduct and violations alleged herein occurred during the
11 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did
12 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
13 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
14 *Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
15 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
16 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
17 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
18 added, reh'g denied (June 13, 2018).)

19 PRAYER FOR RELIEF

20 WHEREFORE, PLAINTIFF prays for a judgment against DEFENDANT, as
21 follows:

22 1. On behalf of the CALIFORNIA CLASS:

- 23 a. That the Court certify the First Cause of Action asserted by the
24 CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc.
25 § 382;
26 b. An order temporarily, preliminarily and permanently enjoining and
27 restraining DEFENDANT from engaging in similar unlawful conduct as set
28 forth herein;
c. An order requiring DEFENDANT to pay all wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFF and the other members of
2 the CALIFORNIA CLASS; and

3 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
4 fund for restitution of the sums incidental to DEFENDANT's violations due
5 to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

7 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
8 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-
9 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

10 b. Compensatory damages, according to proof at trial, including compensatory
11 damages for minimum wages and overtime compensation and unreimbursed
12 expenses due PLAINTIFF and the other members of the CALIFORNIA
13 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
14 CLASS PERIOD plus interest thereon at the statutory rate;

15 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
16 512 and the applicable IWC Wage Order;

17 d. Liquidated damages pursuant to California Labor Code §§ 1194.2 and
18 1197.1;

19 e. The greater of all actual damages or fifty dollars (\$50) for the initial pay
20 period in which a violation occurs and one hundred dollars (\$100) per each
21 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
22 subsequent pay period, not exceeding an aggregate penalty of four thousand
23 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code
24 §226; and

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

- 1 g. Penalties pursuant to Cal. Lab. Code §1198.5.
- 2 3. On behalf of the State of California and with respect to all AGGRIEVED
- 3 EMPLOYEES:
- 4 a. Recovery of civil penalties as prescribed by the Labor Code Private
- 5 Attorneys General Act of 2004 and other applicable laws; and
- 6 b. An award of penalties, attorneys' fees and costs of suit, as allowable under
- 7 the law.
- 8 c. An award of reasonable attorneys' fees, costs and filing fees paid to the
- 9 LWDA pursuant to California Labor Code § 2699(g) and/or other applicable
- 10 law;
- 11 d. An award of reasonable attorneys' fees and costs pursuant to California
- 12 Labor Code § 226, 248.5, and/or other applicable law;
- 13 e. Pre-judgment interest as provided by law;
- 14 4. On all claims:
- 15 a. An award of interest, including prejudgment interest at the legal rate;
- 16 b. Such other and further relief as the Court deems just and equitable; and
- 17 c. An award of penalties, attorneys' fees and costs of suit, as allowable under
- 18 the law, including, but not limited to, pursuant to Labor Code §218.5, §226,
- 19 §1194 and/or §2802.
- 20

21 Dated: January 6, 2025,

22 **BARVIÉ LAW, APC**

23 By: 
24 _____
25 NICOLE BARVIÉ
26 Attorneys for Plaintiff(s)
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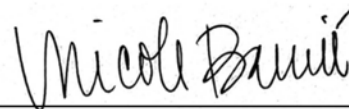
DEMAND FOR A JURY TRIAL

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

Dated: January 6, 2025

BARVIÉ LAW, APC

By



NICOLE BARVIÉ
Attorneys for Plaintiff(s)