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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By G. Rodriguez ,Deputy Clerk

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LUIS RAMIREZ and ANA BALAGTAS,
individuals, on behalf of themselves and on
behalf of all persons similarly situated, and on
behalf of the State of California, as a private
attorney general,

Plaintiffs,

vs.

CLASSIC RESIDENCE MANAGEMENT
LIMITED PARTNERSHIP, a Limited
Partnership; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00039329-CU-OE-CTL

**SECOND AMENDED CONSOLIDATED 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; and,
9. FAILURE TO PAY SICK PAY WAGES IN
VIOLATION OF CAL. LAB CODE §§201-204,
233, 246.
10. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR CODE
§§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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1 Luis Ramirez and Ana Balagtas (“PLAINTIFFS”), an individual, on behalf of himself and all
2 other similarly situated current and former employees alleges on information and belief, except for his
3 own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. Classic Residence Management Limited Partnership (“DEFENDANT”) is a limited
7 partnership that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in California.

9 2. DEFENDANT is an assisted living, retirement community in California.

10 3. PLAINTIFF RAMIREZ was employed by DEFENDANT in California from November
11 2022 to June 1, 2023. PLAINTIFF RAMIREZ was at all times classified by DEFENDANT as a non-
12 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

14 4. PLAINTIFF BALAGTAS was employed by DEFENDANT in California from
15 approximately January 2023 to approximately December 2024. PLAINTIFF BALAGTAS was at all times
16 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
17 required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

20 21 **THE CONDUCT**

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

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

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

19 11. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members'
20 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS and other
21 CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT. The non-
22 discretionary incentive program provided all employees paid on an hourly basis with incentive
23 compensation when the employees met the various performance goals set by DEFENDANT. However,
24 when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to
25 PLAINTIFFS and other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
26 compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
27 meal and rest break premium pay. Management and supervisors described the incentive program to
28 potential and new employees as part of the compensation package. As a matter of law, the incentive

1 compensation received by PLAINTIFFS and other CALIFORNIA CLASS Members must be included in
2 the “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime compensation
3 and meal and rest break premiums to PLAINTIFFS and other CALIFORNIA CLASS Members by
4 DEFENDANT.

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

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

1 control over the locations where employees may take their rest period. Employers cannot impose controls
2 that prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
3 DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA CLASS Members from
4 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFFS and other
5 CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

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

20 15. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
21 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
22 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
23 employer shall furnish each of his or her employees with an accurate itemized wage statement in writing
24 showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay
25 period and the corresponding amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA
26 CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all applicable
27 hourly rates during the pay period and the total hours worked, and the applicable pay period in which the
28 wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT

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

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

12
13 [I]n addition to, and entirely independent and apart from, any other penalty provided in this article,
14 every person who fails to pay the wages of each employee as provided in Sections. . . .204. . . shall
15 be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
16 each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional
17 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
18 amount unlawfully withheld.

19 17. DEFENDANT from time to time failed to pay PLAINTIFFS and members of the
20 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period in
21 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly” regular wage
22 payments.
23

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

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

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

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

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

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

1 or of his or her obedience to the directions of the employer, even though unlawful, unless the employee,
2 at the time of obeying the directions, believed them to be unlawful."

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

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

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

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

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

JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

31. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of the initial Complaint in this

1 Action and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The
2 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
3 dollars (\$5,000,000.00).

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

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

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

20 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
21 Members is impracticable.

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

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

- 1 (b) Committing an act of unfair competition in violation of the UCL, by failing to
2 provide the PLAINTIFFS and the other members of the CALIFORNIA CLASS
3 with the legally required meal and rest periods.

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

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

1 38. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
2 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, statutory
4 and other legal questions within the class format, prosecution of separate actions
5 by individual members of the CALIFORNIA CLASS will create the risk of:

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

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

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

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

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

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

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

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

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

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

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

25 4) A class action is superior to other available methods for the fair and
26 efficient adjudication of this litigation because class treatment will obviate
27 the need for unduly and unnecessary duplicative litigation that is likely to
28

1 result in the absence of certification of this action pursuant to Cal. Code of
2 Civ. Proc. § 382.

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

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

- 1 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
2 business records of DEFENDANT; and,
- 3 (i) Class treatment provides manageable judicial treatment calculated to bring a
4 efficient and rapid conclusion to all litigation of all wage and hour related claims
5 arising out of the conduct of DEFENDANT as to the members of the
6 CALIFORNIA CLASS.

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

12
13 **THE CALIFORNIA LABOR SUB-CLASS**

14 41. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
15 Ninth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
16 CLASS who are or previously were employed by DEFENDANT in California, including any employees
17 staffed with DEFENDANT by a third party, and classified as non exempt employees (the "CALIFORNIA
18 LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing of the initial
19 Complaint in this Action and ending on the date as determined by the Court (the "CALIFORNIA LABOR
20 SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
21 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
22 (\$5,000,000.00).

23 42. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission
24 ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally,
25 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
26 compensation for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR
27 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the
28 benefit of this work, required employees to perform this work and permitted or suffered to permit this work.

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

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

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

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

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

26 46. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
27 California law by:
28

- 1 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS and
2 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
3 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code §
4 1194;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
6 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
7 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
8 Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
10 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
11 statement in writing showing the corresponding correct amount of wages earned
12 by the employee;
- 13 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and
14 the other members of the CALIFORNIA LABOR SUB-CLASS with all legally
15 required off-duty, uninterrupted thirty (30) minute meal breaks and the legally
16 required off-duty rest breaks;
- 17 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
18 employee is discharged or quits from employment, the employer must pay the
19 employee all wages due without abatement, by failing to tender full payment and/or
20 restitution of wages owed or in the manner required by California law to the
21 members of the CALIFORNIA LABOR SUB-CLASS who have terminated their
22 employment; and,
- 23 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the
24 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred
25 in the discharge of their job duties.

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

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

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

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

1 recover the relatively small amount of economic losses sustained by the
2 individual CALIFORNIA LABOR SUB-CLASS Members when compared
3 to the substantial expense and burden of individual prosecution of this
4 litigation;

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

7 A. Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA LABOR SUB-CLASS, which
9 would establish incompatible standards of conduct for the
10 DEFENDANT; and/or,

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

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

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

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

- 3 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS
4 predominate over any question affecting only individual CALIFORNIA LABOR
5 SUB-CLASS Members;
- 6 (b) A Class Action is superior to any other available method for the fair and efficient
7 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
8 CLASS because in the context of employment litigation a substantial number of
9 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
10 their rights individually out of fear of retaliation or adverse impact on their
11 employment;
- 12 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it
13 is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
14 before the Court;
- 15 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will
16 not be able to obtain effective and economic legal redress unless the action is
17 maintained as a Class Action;
- 18 (e) There is a community of interest in obtaining appropriate legal and equitable relief
19 for the acts of unfair competition, statutory violations and other improprieties, and
20 in obtaining adequate compensation for the damages and injuries which
21 DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-
22 CLASS;
- 23 (f) There is a community of interest in ensuring that the combined assets of
24 DEFENDANT are sufficient to adequately compensate the members of the
25 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
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27
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- 1 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
3 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 4 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable
5 from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-
6 CLASS consists of all CALIFORNIA CLASS Members who worked for
7 DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-
8 CLASS PERIOD; and,
- 9 (i) Class treatment provides manageable judicial treatment calculated to bring a
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANT as to the members of the
12 CALIFORNIA LABOR SUB-CLASS.

13
14 **FIRST CAUSE OF ACTION**

15 **For Unlawful Business Practices**

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

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

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

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

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

24 Any person who engages, has engaged, or proposes to engage in unfair competition may
25 be enjoined in any court of competent jurisdiction. The court may make such orders or
26 judgments, including the appointment of a receiver, as may be necessary to prevent the use
27 or employment by any person of any practice which constitutes unfair competition, as
28 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.

1 Cal. Bus. & Prof. Code § 17203.

2 53. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
3 business practice which violates California law, including but not limited to, the applicable Industrial Wage
4 Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210,
5 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor Standards Act and federal
6 regulations promulgated thereunder, for which this Court should issue declaratory and other equitable relief
7 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
8 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

14 55. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
15 in that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest periods,
16 the required amount of compensation for missed meal and rest periods and overtime and minimum wages
17 owed, failed to timely pay wages, and failed to reimburse all necessary business expenses incurred, and
18 failed to provide Fair Labor Standards Act overtime wages due for overtime worked as a result of failing
19 to include non-discretionary incentive compensation into their regular rates of pay for purposes of
20 computing the proper overtime pay due to a business practice that cannot be justified, pursuant to the
21 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code
22 §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal.
23 Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

24 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
25 deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other members of
26 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.
27
28

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

5 58. Therefore, PLAINTIFFS demands on behalf of himself and on behalf of each
6 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period
7 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
8 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

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

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

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

23 62. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and do,
24 seek such relief as may be necessary to restore to them the money and property which DEFENDANT has
25 acquired, or of which PLAINTIFFS and the other members of the CALIFORNIA CLASS have been
26 deprived, by means of the above described unlawful and unfair business practices, including earned but
27 unpaid wages for all time worked.
28

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

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

SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

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

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

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

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

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

1 68. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission
2 is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed
3 in unlawful.

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

6 70. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other members
7 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As
8 set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely
9 payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
10 CLASS.

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

15 72. In committing these violations of the California Labor Code, DEFENDANT inaccurately
16 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFFS
17 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt
18 to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the
19 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

23 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
24 permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members to work without
25 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA LABOR
26 SUB-CLASS PERIOD, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
27 were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.
28

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

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

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

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

1 intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
2 Members are entitled to seek and recover statutory costs.

3
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Compensation**

6 **[Cal. Lab. Code § 510]**

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

8 79. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege
9 and incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

10
11 80. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring
12 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
13 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
14 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12)
15 hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

25 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
26 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT to
27 work for DEFENDANT and were not paid for all the time they worked, including overtime work.
28

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

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

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

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

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

1 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work,
2 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as evidenced
3 by DEFENDANT's business records and witnessed by employees.

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

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

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

22
23 93. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS therefore
24 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the
25 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor
26 Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined
27 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
28

1 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are
2 also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
3 on behalf 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 CALIFORNIA
5 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 Defendants)**

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

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

100. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members

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

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

6 **SIXTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 226]**

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

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

13 103. Cal. Labor Code § 226 provides that an employer must furnish employees with
14 an "accurate itemized" statement in writing showing:

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

104. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
226 provides that every employer shall furnish each of his or her employees with an accurate itemized
wage statement in writing showing, among other things, gross wages earned and all applicable hourly

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

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

25 26 SEVENTH CAUSE OF ACTION

27 For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

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

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

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

108. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones and home offices in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones and home offices for 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 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

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

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

As used in this article:

(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.

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

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

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

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later 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 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.

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

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

1 If an employer willfully fails to pay, without abatement or reduction, in accordance
2 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
3 discharged or who quits, the wages of the employee shall 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.

4 116. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS
5 Members has terminated and DEFENDANT has not tendered payment of all wages owed as required
6 by law. Additionally, at all times during the term of PLAINTIFF's employment with DEFENDANT,
7 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members earned and accrued vested vacation
8 and holiday time on the date of their termination pursuant to DEFENDANT's uniform vacation policies
9 and applicable California law. The amount of vacation pay PLAINTIFFS and the other CALIFORNIA
10 LABOR SUB-CLASS Members earned and accumulated is evidenced by DEFENDANT's business
11 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFFS
12 and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay such wages at the regular
13 rate of pay and more specifically the final rate of pay that included all non-discretionary incentive
14 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT underpaid
15 vacation wages to PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members at their base
16 rates of pay, instead of including all of PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS
17 Members' non-discretionary incentive compensation into the vacation wage payment calculations.
18 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
19 PLAINTIFFS and other CALIFORNIA LABOR CLASS Members would be paid vacation upon leaving
20 employment with DEFENDANT. As a result of DEFENDANT's unlawful practice, policy and
21 procedure to deny paying the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
22 CLASS all of their vested vacation and holiday time, DEFENDANT failed to pay the PLAINTIFFS
23 and the members of the CALIFORNIA LABOR SUB-CLASS all vested vacation time as wages due
24 upon employment termination, in violation of the California Labor Code, Sections 201, 202, 203 and
25 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFFS and other
26 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
27 PLAINTIFF's' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary compensation
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1 into the waiting time penalty calculations. This failure by DEFENDANT is believed to be the result of
2 DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for earned, accrued
3 and vested vacation and holiday time, as well as the corresponding waiting time penalties that were
4 paid. DEFENDANT perpetrated this unlawful, unfair and deceptive practice to the detriment of the
5 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS . DEFENDANT's uniform
6 practice and policy of failing to pay the LABOR SUB-CLASS Members for all vested vacation and
7 holiday time accumulated at employment termination violated and continues to violate Section 227.3 of
8 the California Labor Code.

9 116. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
10 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have
11 not been fully paid their wages due to them, PLAINTIFFS demands thirty days of pay as penalty for not
12 paying all wages due at time of termination for all employees who terminated employment during the
13 CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages
14 due, plus interest and statutory costs as allowed by law.

15
16 **NINTH CAUSE OF ACTION**

17 **For Failure to Pay Sick Pay Wages**

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

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

20 **and Against All Defendants)**

21 117. 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 paragraphs of
23 this Complaint.

24 118. Cal Lab. Code § 233 provides that an employer must permit an employee to
25 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of
26 entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of
27 accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as
28 paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and

1 compensate based on one of two calculations: (i) “Paid sick time for nonexempt employees shall be
2 calculated in the same manner as the regular rate of pay for the workweek in which the employee uses
3 paid sick time, whether or not the employee actually works overtime in that workweek,” or (ii) “Paid
4 sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not
5 including overtime premium pay, by the employee’s total hours worked in the full pay periods of the
6 prior 90 days of employment.” Under Cal Lab. Code §§ 218 and 233, employees may sue to recover
7 underpaid sick pay wages as damages.

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

19 120. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
20 during each calendar month and are to be paid no later than the payday for the next regular payroll
21 period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon use
22 of accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for the next
23 regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code §
24 201 provides that if an employer discharges an employee, wages earned and unpaid at the time of
25 discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an employee is entitled
26 to receive all unpaid wages no later than 72 hours after an employee quits his or her employment,
27 unless the employee has given 72-hour notice of his or her intention to quit, in which case the employee
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1 is entitled to his or her wages at the time of quitting. The Labor Code penalizes untimely payments.
2 For example, Cal. Lab. Code § 203 provides that if an employer willfully fails to pay wages owed in
3 accordance with Cal. Lab. Code §§ 201-202, then the wages of the employee shall continue as a penalty
4 from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty
5 (30) days. Likewise, Cal. Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and
6 untimely payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
7 sue to recover applicable penalties.

8 121. As alleged herein and as a matter of policy and practice, DEFENDANT
9 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other members of
10 the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result,
11 DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code
12 provisions. PLAINTIFFS is informed and believes that DEFENDANT was advised by skilled lawyers
13 and knew, or should have known, of the mandates of the Labor Code as it relates to PLAINTIFF's
14 allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized
15 that 'wages' also include those benefits to which an employee is entitled as a part of his or her
16 compensation, including money, room, board, clothing, vacation pay, *and sick pay*." *Murphy v.*
17 *Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
18 willfully fails to timely pay PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-
19 CLASS all sick pay wages due, DEFENDANT is subject to applicable penalties.

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

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1 **TENTH CAUSE OF ACTION**

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

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

4 **(By PLAINTIFFS and Against All Defendants)**

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

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

16 125. PLAINTIFFS, and such persons that may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
18 this Representative Action on behalf of the State of California with respect to himself and all
19 individuals who are or previously were employed by DEFENDANT in California, including any
20 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees
21 ("AGGRIEVED EMPLOYEES") during the time period of June 8, 2022 until a date as determined by
22 the Court (the "PAGA PERIOD").

23 126. On June 8, 2023, PLAINTIFFS RAMIREZ gave written notice by electronic mail to the
24 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
25 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The
26 statutory waiting period for PLAINTIFFS RAMIREZ to add these allegations to the Complaint has expired.
27 As a result, pursuant to Section 2699.3, PLAINTIFFS RAMIREZ may now commence a representative
28

1 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to
2 all AGGRIEVED EMPLOYEES as herein defined.

3 127. On December 17, 2024, PLAINTIFFS BALAGTAS gave written notice by electronic mail
4 to the Agency and by certified mail to the employer of the specific provisions of this code alleged to have
5 been violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS
6 BALAGTAS to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
7 PLAINTIFFS BALAGTAS may now commence a representative civil action under PAGA pursuant to
8 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
9 herein defined.

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

21 129. All of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFFS
23 during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that affected the
24 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified
25 for Publication 12/19/18).

27 ¹Plaintiffs specifically exclude and/or donot allege any claims under California Labor
28 Code §558(a)(3).

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PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an

1 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of
2 Cal. Lab. Code § 226;

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

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

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

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

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

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

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 cost of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

19 Dated: June 22, 2026

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

22 By: /s/ Christine T. LeVu

23 Norman B. Blumenthal

24 Nicholas J. De Blouw

Christine T. LeVu

25 *Attorneys for Plaintiffs*
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