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**WRITERS EXT:  
1004**

January 30, 2025  
CA3610

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

The Goodyear Tire & Rubber Company  
Certified Mail #9589071052702306888464  
CSC - LAWYERS INCORPORATING  
SERVICE  
BECKY DEGEORGE  
2710 GATEWAY OAKS DRIVE, Suite  
150N  
SACRAMENTO, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s) brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by The Goodyear Tire & Rubber Company in California, including any employees staffed with The Goodyear Tire & Rubber Company by a third party, and classified as non-exempt employees during the time period of January 30, 2024 until a date as determined by the Court. Our offices represent Plaintiff Mario Velasquez (“Plaintiff”) and other Aggrieved Employees in a lawsuit against The Goodyear Tire & Rubber Company (“Defendant”). Plaintiff was employed by Defendant in California from January 27, 2020 to September 9, 2024. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In

addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5<sup>th</sup> 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF TULARE**

9  
10 MARIO VELASQUEZ, an individual, on  
behalf of himself and on behalf of all persons  
11 similarly situated,

12  
13 Plaintiff,

14 vs.

15 THE GOODYEAR TIRE & RUBBER  
COMPANY, a corporation; and DOES 1  
16 through 50, inclusive,

17  
18 Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB CODE §§201-204, 233, 246.

**DEMAND FOR A JURY TRIAL**

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

4  
5 **THE PARTIES**

6 1. The Goodyear Tire & Rubber Company ("DEFENDANT") is a corporation that  
7 at all relevant times mentioned herein conducted and continues to conduct substantial business  
8 in California.

9 2. DEFENDANT manufactures tires for many types of vehicles, including cars,  
10 trucks, aircraft, and race cars and offers automotive services in California.

11 3. PLAINTIFF was employed by DEFENDANT in California from January 27, 2020  
12 to September 9, 2024. PLAINTIFF was at all times classified by DEFENDANT as a  
13 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest  
14 periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

### 22 23 THE CONDUCT

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT  
25 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time  
26 worked, meaning the time during which an employee is subject to the control of an  
27 employer, including all the time the employee is suffered or permitted to work.  
28 DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without

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

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

24 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
25 Members' compensation is DEFENDANT's non-discretionary incentive program that paid  
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
27 performance for DEFENDANT. The non-discretionary incentive program provided all  
28 employees paid on an hourly basis with incentive compensation when the employees met the

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

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

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

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

13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by working without their time being accurately recorded and without compensation at the

1 applicable minimum wage and overtime wage rates. To the extent that the time worked off  
2 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay  
3 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,  
4 1197, and 1197.1.

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

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

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

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

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

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

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

25 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF  
26 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe  
27 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is  
28 informed and believes and based thereon alleges that such failure to pay sick pay at regular

1 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose  
2 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code  
3 Sections 201-203.

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

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

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

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
2 DEFENDANT to use their personal cellular phones. As a result, in the course of their  
3 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA  
4 CLASS incurred unreimbursed business expenses which included, but were not limited to,  
5 costs related to the use of their personal cellular phones all on behalf of and for the benefit of  
6 DEFENDANT.

7 24. In violation of the applicable sections of the California Labor Code and the  
8 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,  
9 DEFENDANT as a matter of company policy, practice and procedure, intentionally,  
10 knowingly and systematically failed to provide PLAINTIFF and the other Aggrieved  
11 Employees suitable seating when the nature of these employees' work reasonably permitted  
12 sitting.

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

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

26 27. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally  
27 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage  
28 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due

1 to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-  
2 duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for  
3 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the  
4 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties  
5 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to  
6 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's  
7 business records. The amount in controversy for PLAINTIFF individually does not exceed  
8 the sum or value of \$75,000.

### 9 **JURISDICTION AND VENUE**

10 28. This Court has jurisdiction over this Action pursuant to California Code of  
11 Civil Procedure, Section 410.10 and California Business & Professions Code, Section  
12 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly  
13 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

### 20 **THE CALIFORNIA CLASS**

21 30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and  
22 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the  
23 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a  
24 California class, defined as all individuals who are or previously were employed by  
25 DEFENDANT in California, including any employees staffed with DEFENDANT by a  
26 third party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any  
27  
28

1 time during the period beginning four (4) years prior to the filing of this Complaint and  
2 ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”).  
3 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is  
4 under five million dollars (\$5,000,000.00).

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

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

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

24 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
25 CLASS Members is impracticable.

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

- 1 (a) Committing an act of unfair competition in violation of , Cal. Bus. &  
2 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly  
3 and/or deceptively having in place company policies, practices and  
4 procedures that failed to record and pay PLAINTIFF and the other  
5 members of the CALIFORNIA CLASS for all time worked, including  
6 minimum wages owed and overtime wages owed for work performed  
7 by these employees; and,  
8 (b) Committing an act of unfair competition in violation of the UCL, by  
9 failing to provide the PLAINTIFF and the other members of the  
10 CALIFORNIA CLASS with the legally required meal and rest periods.

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

- 13 (a) The persons who comprise the CALIFORNIA CLASS are so numerous  
14 that the joinder of all such persons is impracticable and the disposition  
15 of their claims as a class will benefit the parties and the Court;  
16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief  
17 issues that are raised in this Complaint are common to the  
18 CALIFORNIA CLASS will apply to every member of the  
19 CALIFORNIA CLASS;  
20 (c) The claims of the representative PLAINTIFF are typical of the claims  
21 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all  
22 the other members of the CALIFORNIA CLASS, was classified as a  
23 non-exempt employee paid on an hourly basis who was subjected to the  
24 DEFENDANT's deceptive practice and policy which failed to provide  
25 the legally required meal and rest periods to the CALIFORNIA CLASS  
26 and thereby underpaid compensation to PLAINTIFF and  
27 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a  
28 result of DEFENDANT's employment practices. PLAINTIFF and the

1 members of the CALIFORNIA CLASS were and are similarly or  
2 identically harmed by the same unlawful, deceptive and unfair  
3 misconduct engaged in by DEFENDANT; and,

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

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

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

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

- 27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused  
28 to act on grounds generally applicable to the CALIFORNIA CLASS,

1 making appropriate class-wide relief with respect to the CALIFORNIA  
2 CLASS as a whole in that DEFENDANT failed to pay all wages due to  
3 members of the CALIFORNIA CLASS as required by law;

4 1) With respect to the First Cause of Action, the final relief on  
5 behalf of the CALIFORNIA CLASS sought does not relate  
6 exclusively to restitution because through this claim  
7 PLAINTIFF seeks declaratory relief holding that the  
8 DEFENDANT's policy and practices constitute unfair  
9 competition, along with declaratory relief, injunctive relief, and  
10 incidental equitable relief as may be necessary to prevent and  
11 remedy the conduct declared to constitute unfair competition;

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

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

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

27 A. Inconsistent or varying adjudications with respect to  
28 individual members of the CALIFORNIA CLASS, which

1 would establish incompatible standards of conduct for the  
2 DEFENDANT; and/or,

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

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

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

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

23 (a) The questions of law and fact common to the CALIFORNIA CLASS  
24 predominate over any question affecting only individual CALIFORNIA  
25 CLASS Members because the DEFENDANT's employment practices  
26 are applied with respect to the CALIFORNIA CLASS;

27 (b) A Class Action is superior to any other available method for the fair  
28 and efficient adjudication of the claims of the members of the

1 CALIFORNIA CLASS because in the context of employment litigation  
2 a substantial number of individual CALIFORNIA CLASS Members  
3 will avoid asserting their rights individually out of fear of retaliation or  
4 adverse impact on their employment;

5 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
6 impractical to bring all members of the CALIFORNIA CLASS before  
7 the Court;

8 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not  
9 be able to obtain effective and economic legal redress unless the action  
10 is maintained as a Class Action;

11 (e) There is a community of interest in obtaining appropriate legal and  
12 equitable relief for the acts of unfair competition, statutory violations  
13 and other improprieties, and in obtaining adequate compensation for the  
14 damages and injuries which DEFENDANT's actions have inflicted  
15 upon the CALIFORNIA CLASS;

16 (f) There is a community of interest in ensuring that the combined assets of  
17 DEFENDANT are sufficient to adequately compensate the members of  
18 the CALIFORNIA CLASS for the injuries sustained;

19 (g) DEFENDANT has acted or refused to act on grounds generally  
20 applicable to the CALIFORNIA CLASS, thereby making final class-  
21 wide relief appropriate with respect to the CALIFORNIA CLASS as a  
22 whole;

23 (h) The members of the CALIFORNIA CLASS are readily ascertainable  
24 from the business records of DEFENDANT; and,

25 (i) Class treatment provides manageable judicial treatment calculated to  
26 bring a efficient and rapid conclusion to all litigation of all wage and  
27 hour related claims arising out of the conduct of DEFENDANT as to  
28 the members of the CALIFORNIA CLASS.

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

6  
7                                 **THE CALIFORNIA LABOR SUB-CLASS**

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

18           41.     DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare  
19 Commission ("IWC") Wage Order requirements, and the applicable provisions of California  
20 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT  
21 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other  
22 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to  
23 these employees, even though DEFENDANT enjoyed the benefit of this work, required  
24 employees to perform this work and permitted or suffered to permit this work.  
25 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to  
26 which these employees are entitled in order to unfairly cheat the competition and unlawfully  
27 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR  
28

1 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD  
2 should be adjusted accordingly.

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

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

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

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

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

- 27 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the  
28 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-

1 CLASS all wages due for overtime worked, for which DEFENDANT is  
2 liable pursuant to Cal. Lab. Code § 1194;

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

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

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

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

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

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

27 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS  
28 are so numerous that the joinder of all CALIFORNIA LABOR SUB-

1 CLASS Members is impracticable and the disposition of their claims as  
2 a class will benefit the parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief  
4 issues that are raised in this Complaint are common to the  
5 CALIFORNIA LABOR SUB-CLASS and will apply to every member  
6 of the CALIFORNIA LABOR SUB-CLASS;

7 (c) The claims of the representative PLAINTIFF are typical of the claims  
8 of each member of the CALIFORNIA LABOR SUB-CLASS.  
9 PLAINTIFF, like all the other members of the CALIFORNIA LABOR  
10 SUB-CLASS, was a non-exempt employee paid on an hourly basis who  
11 was subjected to the DEFENDANT's practice and policy which failed  
12 to pay the correct amount of wages due to the CALIFORNIA LABOR  
13 SUB-CLASS. PLAINTIFF sustained economic injury as a result of  
14 DEFENDANT's employment practices. PLAINTIFF and the members  
15 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
16 identically harmed by the same unlawful, deceptive, and unfair  
17 misconduct engaged in by DEFENDANT; and,

18 (d) The representative PLAINTIFF will fairly and adequately represent and  
19 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and  
20 has retained counsel who are competent and experienced in Class  
21 Action litigation. There are no material conflicts between the claims of  
22 the representative PLAINTIFF and the members of the CALIFORNIA  
23 LABOR SUB-CLASS that would make class certification  
24 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
25 will vigorously assert the claims of all CALIFORNIA LABOR SUB-  
26 CLASS Members.

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

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

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

1 treatment will obviate the need for unduly and unnecessary  
2 duplicative litigation that is likely to result in the absence of  
3 certification of this action pursuant to Cal. Code of Civ. Proc. §  
4 382.

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

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

- 1 (f) There is a community of interest in ensuring that the combined assets of  
2 DEFENDANT are sufficient to adequately compensate the members of  
3 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally  
5 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby  
6 making final class-wide relief appropriate with respect to the  
7 CALIFORNIA LABOR SUB-CLASS as a whole;
- 8 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
9 ascertainable from the business records of DEFENDANT. The  
10 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA  
11 CLASS Members who worked for DEFENDANT in California at any  
12 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to  
14 bring a efficient and rapid conclusion to all litigation of all wage and  
15 hour related claims arising out of the conduct of DEFENDANT as to  
16 the members of the CALIFORNIA LABOR SUB-CLASS.

17  
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

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

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

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

27 51. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
2 competition as follows:

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

11 Cal. Bus. & Prof. Code § 17203.

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

20 53. By the conduct alleged herein, DEFENDANT's practices were unlawful and  
21 unfair in that these practices violate public policy, were immoral, unethical, oppressive,  
22 unscrupulous or substantially injurious to employees, and were without valid justification or  
23 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
24 17203 of the California Business & Professions Code, including restitution of wages  
25 wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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1 implementing a policy and practice that denies accurate compensation to PLAINTIFF and  
2 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum  
3 wage pay.

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

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

14 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT  
15 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS  
16 Members to work without paying them for all the time they were under DEFENDANT's  
17 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked  
19 that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

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

20 86. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
21 from the overtime requirements of the law. None of these exemptions are applicable to the  
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,  
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not  
24 subject to a valid collective bargaining agreement that would preclude the causes of action  
25 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of  
26 himself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations  
27 of non-negotiable, non-waiveable rights provided by the State of California.  
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1           87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and  
2 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for  
3 overtime worked that they are entitled to, constituting a failure to pay all earned wages..

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

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

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

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

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

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

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17 **FOURTH CAUSE OF ACTION**

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

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

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

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

25 94. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time  
26 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other  
27 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order  
28 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA

1 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of  
2 all of their duties for the legally required off-duty meal periods. As a result of their rigorous  
3 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
4 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.  
5 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA  
6 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)  
7 hour of work is evidenced by DEFENDANT's business records from time to time. Further,  
8 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a  
9 second off-duty meal period in some workdays in which these employees were required by  
10 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF  
11 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal  
12 breaks without additional compensation and in accordance with DEFENDANT's strict  
13 corporate policy and practice.

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

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

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1 **FIFTH CAUSE OF ACTION**

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

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

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

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

9 98. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were  
10 from time to time required to work in excess of four (4) hours without being provided ten  
11 (10) minute rest periods. Further, these employees from time to time were denied their first  
12 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
13 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of  
14 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten  
15 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

16 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not  
17 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,  
18 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically  
19 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

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

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

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**SEVENTH CAUSE OF ACTION**

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

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**[Cal. Lab. Code § 2802]**

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

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**Defendants)**

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105. PLAINTIFF 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.

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106. 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.

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107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF 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 PLAINTIFF 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, PLAINTIFF 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 PLAINTIFF 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.

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

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

10 **EIGHTH CAUSE OF ACTION**

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

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

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

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

18 110. Cal. Lab. Code § 200 provides, in relevant part, that:  
19 As used in this article:

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

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

24 111. 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  
25 payable immediately."

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

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

1 later than 72 hours thereafter, unless the employee has given 72 hours  
2 previous notice of his or her intention to quit, in which case the employee  
3 is entitled to his or her wages at the time of quitting. Notwithstanding any  
4 other provision of law, an employee who quits without providing a 72-  
5 hour notice shall be entitled to receive payment by mail if he or she so  
6 requests and designates a mailing address. The date of the mailing shall  
7 constitute the date of payment for purposes of the requirement to provide  
8 payment within 72 hours of the notice of quitting.

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

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

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

18 115. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-  
19 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages  
20 owed as required by law. Additionally, at all times during the term of PLAINTIFF's  
21 employment with DEFENDANT, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS  
22 Members earned and accrued vested vacation and holiday time on the date of their  
23 termination pursuant to DEFENDANT's uniform vacation policies and applicable California  
24 law. The amount of vacation pay PLAINTIFF and the other CALIFORNIA LABOR SUB-  
25 CLASS Members earned and accumulated is evidenced by DEFENDANT's business  
26 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to  
27 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay  
28 such wages at the regular rate of pay and more specifically the final rate of pay that included  
all non-discretionary incentive compensation. Rather than pay vacation wages at the regular  
rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFF and other  
CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of  
including all of PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-  
discretionary incentive compensation into the vacation wage payment calculations.  
DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which

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

20 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
21 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated  
22 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days  
23 of pay as penalty for not paying all wages due at time of termination for all employees who  
24 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and  
25 demands an accounting and payment of all wages due, plus interest and statutory costs as  
26 allowed by law.

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3 **NINTH CAUSE OF ACTION**

4 **For Failure to Pay Sick Pay Wages**

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

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

7 **and Against All Defendants)**

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

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

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

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

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

26       120. As alleged herein and as a matter of policy and practice, DEFENDANT  
27 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other  
28 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay

1 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,  
2 among other Labor Code provisions. PLAINTIFF is informed and believes that  
3 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the  
4 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the  
5 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also  
6 include those benefits to which an employee is entitled as a part of his or her compensation,  
7 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*  
8 *Cole Prods., Inc.*, 40 Cal. 4<sup>th</sup> 1094, 1103 (2007)(emphasis added). Because DEFENDANT  
9 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA  
10 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable  
11 penalties.

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

### 17 **PRAYER FOR RELIEF**

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

20 1. On behalf of the CALIFORNIA CLASS:

- 21 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
22 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 23 B) An order temporarily, preliminarily and permanently enjoining and restraining  
24 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 25 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully  
26 withheld from compensation due to PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS; and,

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

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

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

8 B) Compensatory damages, according to proof at trial, including compensatory  
9 damages for minimum and overtime compensation due PLAINTIFF and the other  
10 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable  
11 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the  
12 statutory rate;

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

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

20 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and  
21 1197;

22 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA  
23 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and  
24 costs of suit.; and,

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

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

7 Dated: January 24, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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10 By: \_\_\_\_\_

11 Norman B. Blumenthal

Nicholas J. De Blouw

12 *Attorneys for Plaintiff*

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**DEMAND FOR A JURY TRIAL**

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

Dated: January 24, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: \_\_\_\_\_  
Norman B. Blumenthal  
Nicholas J. De Blouw  
*Attorneys for Plaintiff*