

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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**WRITERS EXT:
1004**

January 31, 2025
CA3620

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

BG California IT Staffing, Inc.
Certified Mail #9589071052702306888709
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 BG California Multifamily Staffing, Inc. and/or BG California IT Staffing, Inc. and classified as non-exempt employees in California during the time period of January 31, 2024 until a date as determined by the Court. Our offices represent Plaintiff Roxana Zelaya (“Plaintiff”) and other Aggrieved Employees in a lawsuit against BG California Multifamily Staffing, Inc. and/or BG California IT Staffing, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California since 2023. Plaintiff has been 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. 5th 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 Statue 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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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.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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7 *Attorneys for Plaintiff*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

10
11 ROXANA ZELAYA, an individual, on behalf of
12 herself and on behalf of all persons similarly
situated,

13
14 Plaintiff,

15 vs.

16 BG CALIFORNIA MULTIFAMILY STAFFING,
INC., a Corporation; BG CALIFORNIA IT
17 STAFFING, INC., a Corporation; and DOES 1
through 50, inclusive,

18
19 Defendants.
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Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200;
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; and,
8. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB CODE §§201-203, 233, 246.

DEMAND FOR A JURY TRIAL

1 Roxana Zelaya (“PLAINTIFF”), an individual, on behalf of herself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 her own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. BG California Multifamily Staffing, Inc. is a corporation that at all relevant times
7 mentioned herein conducted and continues to conduct substantial business in California.

8 2. BG California IT Staffing, Inc. is a corporation that at all relevant times
9 mentioned herein conducted and continues to conduct substantial business in California.

10 3. BG California Multifamily Staffing, Inc. and BG California IT Staffing, Inc. are
11 the joint employers of PLAINTIFF as evidenced by paycheck, standardized company
12 employment handbooks, by standardized policies and procedures, by the company PLAINTIFF
13 performs work for respectively and by the California Secretary of State Business Information
14 which includes but is not limited the same mailing and business addresses and same agent for
15 service of process, and are therefore jointly responsible as employers for the conduct alleged
16 herein, and are therefore collectively referred to herein as (“DEFENDANT”).

17 4. DEFENDANT provides employees to their clients in the residential and IT sectors
18 in California.

19 5. PLAINTIFF is currently employed by DEFENDANT in California. PLAINTIFF’s
20 employment with DEFENDANT started in 2023. PLAINTIFF has been at all times classified
21 by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
22 required meal and rest periods and payment of minimum and overtime wages due for all time
23 worked.

24 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,
25 defined as all individuals who are or previously were employed by BG California Multifamily
26 Staffing, Inc. and/or BG California IT Staffing, Inc. and classified as non-exempt employees
27 (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to
28

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

4 7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
5 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
6 during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice
7 which failed to lawfully compensate these employees. DEFENDANT's policy and practice
8 alleged herein was an unlawful, unfair and deceptive business practice whereby
9 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
10 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
11 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
12 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA
13 CLASS who have been economically injured by DEFENDANT's past and current unlawful
14 conduct, and all other appropriate legal and equitable relief.

15 8. The true names and capacities, whether individual, corporate, subsidiary,
16 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
17 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
18 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
19 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
20 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
21 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
22 50, inclusive, are responsible in some manner for one or more of the events and happenings
23 that proximately caused the injuries and damages hereinafter alleged.

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

5 6 **THE CONDUCT**

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

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

8 12. The second component of PLAINTIFF's and other CALIFORNIA CLASS
9 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
10 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
11 performance for DEFENDANT. The non-discretionary incentive program provided all
12 employees paid on an hourly basis with incentive compensation when the employees met the
13 various performance goals set by DEFENDANT. However, when calculating the regular
14 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
15 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
16 compensation as part of the employees' "regular rate of pay" for purposes of calculating
17 overtime pay and meal and rest break premium pay. Management and supervisors described
18 the incentive program to potential and new employees as part of the compensation package.
19 As a matter of law, the incentive compensation received by PLAINTIFF and other
20 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
21 to do so has resulted in a underpayment of overtime compensation and meal and rest break
22 premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

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

9 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
10 CALIFORNIA CLASS Members were also required from time to time to work in excess of
11 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
12 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
13 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
14 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
15 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
16 worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
17 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
18 the applicable California Wage Order requires employers to provide employees with off-
19 duty rest periods, which the California Supreme Court defined as time during which an
20 employee is relieved from all work related duties and free from employer control. In so
21 doing, the Court held that the requirement under California law that employers authorize and
22 permit all employees to take rest period means that employers must relieve employees of all
23 duties and relinquish control over how employees spend their time which includes control
24 over the locations where employees may take their rest period. Employers cannot impose
25 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
26 back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA
27 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
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1 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
2 premises during their rest period.

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

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

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

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

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

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

26 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
27 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
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1 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
2 informed and believes and based thereon alleges that such failure to pay sick pay at regular
3 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
4 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
5 Sections 201-203.

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

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

26 23. In the course of their employment PLAINTIFF and other CALIFORNIA
27 CLASS Members as a business expense, were required by DEFENDANT to use their own
28 personal cellular phones as a result of and in furtherance of their job duties as employees for

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

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

20 **JURISDICTION AND VENUE**

21 25. This Court has jurisdiction over this Action pursuant to California Code of
22 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
23 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
24 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

25 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
27 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
28

1 facilities in this County and/or conducts substantial business in this County, and (ii)
2 committed the wrongful conduct herein alleged in this County against members of the
3 CALIFORNIA CLASS.

4 5 **THE CALIFORNIA CLASS**

6 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
7 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, (the "UCL") as
8 a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,
9 defined as all individuals who are or previously were employed by BG California
10 Multifamily Staffing, Inc. and/or BG California IT Staffing, Inc. and classified as non-
11 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
12 four (4) years prior to the filing of this Complaint and ending on the date as determined by
13 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
14 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
15 (\$5,000,000.00).

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

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

26 30. DEFENDANT has the legal burden to establish that each and every
27 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
28 required by California laws. The DEFENDANT, however, as a matter of policy and

1 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
2 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
3 Member is paid as required by law. This common business practice is applicable to each
4 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
5 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, (the
6 “UCL”) as causation, damages, and reliance are not elements of this claim.

7 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under
10 California law by:

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

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

- 23 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
24 that the joinder of all such persons is impracticable and the disposition
25 of their claims as a class will benefit the parties and the Court;
26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
27 issues that are raised in this Complaint are common to the
28

CALIFORNIA CLASS will apply to every member of the CALIFORNIA CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

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

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

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

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;
- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- (c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

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

1 duplicative litigation that is likely to result in the absence of
2 certification of this action pursuant to Cal. Code of Civ. Proc. §
3 382.

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

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

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

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

19
20 **THE CALIFORNIA LABOR SUB-CLASS**

21 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
22 and Eighth causes Action on behalf of a California sub-class, defined as all members of the
23 CALIFORNIA CLASS who are or previously were employed by BG California Multifamily
24 Staffing, Inc. and/or BG California IT Staffing, Inc. and classified as non-exempt employees
25 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years
26 prior to the filing of the complaint and ending on the date as determined by the Court (the
27 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. §
28

1 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
2 CLASS Members is under five million dollars (\$5,000,000.00).

3 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
4 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
5 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
6 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
8 these employees, even though DEFENDANT enjoyed the benefit of this work, required
9 employees to perform this work and permitted or suffered to permit this work.

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

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

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

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

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

- 1 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with accurate
3 itemized wage statements;
- 4 (c) Whether DEFENDANT has engaged in unfair competition by the
5 above-listed conduct;
- 6 (d) The proper measure of damages and penalties owed to the members of
7 the CALIFORNIA LABOR SUB-CLASS; and,
- 8 (e) Whether DEFENDANT's conduct was willful.

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

- 11 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
12 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
13 CLASS all wages due for overtime worked, for which DEFENDANT is
14 liable pursuant to Cal. Lab. Code § 1194;
- 15 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1, by failing to
16 accurately pay PLAINTIFF and the members of the CALIFORNIA
17 LABOR SUB-CLASS the correct minimum wage pay for which
18 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 19 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
20 the members of the CALIFORNIA LABOR SUB-CLASS with an
21 accurate itemized statement in writing showing the corresponding
22 correct amount of wages earned by the employee;
- 23 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
24 PLAINTIFF and the other members of the CALIFORNIA LABOR
25 SUB-CLASS with all legally required off-duty, uninterrupted thirty
26 (30) minute meal breaks and the legally required off-duty rest breaks;
- 27 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
28 when an employee is discharged or quits from employment, the

1 employer must pay the employee all wages due without abatement, by
2 failing to tender full payment and/or restitution of wages owed or in the
3 manner required by California law to the members of the
4 CALIFORNIA LABOR SUB-CLASS who have terminated their
5 employment; and,

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

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

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

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

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

12 44. 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 LABOR SUB-CLASS will create the risk of:

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

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

1 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
2 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
3 whole in that DEFENDANT fails to pay all wages due. Including the
4 correct wages for all time worked by the members of the
5 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

27 B. Adjudications with respect to individual members of the
28 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 treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- 1 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
2 numerous that it is impractical to bring all members of the
3 CALIFORNIA LABOR SUB-CLASS before the Court;
- 4 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
5 Members, will not be able to obtain effective and economic legal
6 redress unless the action is maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the acts of unfair competition, statutory violations
9 and other improprieties, and in obtaining adequate compensation for the
10 damages and injuries which DEFENDANT's actions have inflicted
11 upon the CALIFORNIA LABOR SUB-CLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of
14 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 15 (g) DEFENDANT has acted or refused to act on grounds generally
16 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
17 making final class-wide relief appropriate with respect to the
18 CALIFORNIA LABOR SUB-CLASS as a whole;
- 19 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
20 ascertainable from the business records of DEFENDANT. The
21 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
22 CLASS Members who worked for DEFENDANT in California at any
23 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 24 (i) Class treatment provides manageable judicial treatment calculated to
25 bring a efficient and rapid conclusion to all litigation of all wage and
26 hour related claims arising out of the conduct of DEFENDANT as to
27 the members of the CALIFORNIA LABOR SUB-CLASS.
28

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

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

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver,
17 as may be necessary to prevent the use or employment by any person of any
18 practice which constitutes unfair competition, as defined in this chapter, or as
19 may be necessary to restore to any person in interest any money or property,
20 real or personal, which may have been acquired by means of such unfair
21 competition.

22 Cal. Bus. & Prof. Code § 17203.

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

1 50. By the conduct alleged herein, DEFENDANT's practices were unlawful and
2 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
3 unscrupulous or substantially injurious to employees, and were without valid justification or
4 utility for which this Court should issue equitable and injunctive relief pursuant to Section
5 17203 of the California Business & Professions Code, including restitution of wages
6 wrongfully withheld.

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

19 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
20 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and
21 the other members of the CALIFORNIA CLASS to be underpaid during their employment
22 with DEFENDANT.

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

27 54. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
2 pay for each workday in which a second off-duty meal period was not timely provided for
3 each ten (10) hours of work.

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

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

13 57. All the acts described herein as violations of, among other things, the
14 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
15 California Labor Code, were unlawful and in violation of public policy, were immoral,
16 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
17 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200.

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

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

27 60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
28 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business

1 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
2 unabated. As a result of the unlawful and unfair business practices described herein,
3 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
4 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
5 from continuing to engage in these unlawful and unfair business practices.

6
7 **SECOND CAUSE OF ACTION**

8 **For Failure To Pay Minimum Wages**

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

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

11 **and Against All Defendants)**

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

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

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

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

26 65. DEFENDANT maintained a wage practice of paying PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
28 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to

1 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

24 70. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for the true time they worked, PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
28

1 injury in amounts which are presently unknown to them and which will be ascertained
2 according to proof at trial.

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

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

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

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
2 and recover statutory costs.

3
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Compensation**

6 **[Cal. Lab. Code § 510]**

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

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

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

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

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

27 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
28

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 79. 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 80. 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 81. 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 herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
27 of non-negotiable, non-waiveable rights provided by the State of California.
28

1 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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.

16 ///

17 ///

18 ///

19 **FOURTH CAUSE OF ACTION**

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

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

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
23 **Defendants)**

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

27 89. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
28 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other

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

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

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

25
26 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

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

98. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members 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

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

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

23
24 **SEVENTH CAUSE OF ACTION**

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

26 **[Cal. Lab. Code § 2802]**

27 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
28 **Defendants)**

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

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

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

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

28 103. PLAINTIFF therefore demands reimbursement for expenditures or losses
incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge

1 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
2 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

3 **EIGHTH CAUSE OF ACTION**

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

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

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

7 **and Against All Defendants)**

8 104. 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.

11 105. 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.

24 106. 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.

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

22 108. As alleged herein and as a matter of policy and practice, DEFENDANT
23 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
24 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
25 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246,
26 among other Labor Code provisions. PLAINTIFF is informed and believes that
27 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
28 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the

1 California Supreme Court has explained that “[c]ourts have recognized that ‘wages’ also
2 include those benefits to which an employee is entitled as a part of his or her compensation,
3 including money, room, board, clothing, vacation pay, *and sick pay.*” *Murphy v. Kenneth*
4 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
5 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
6 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
7 penalties.

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
14 severally, as follows:

15 1. On behalf of the CALIFORNIA CLASS:

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

26 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
27
28

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
2 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
3 action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
7 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
8 statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;
- 16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197;
- 18 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
19 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
20 costs of suit.; and,
- 21 G) The wages of all terminated employees in the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
23 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 24 3. On all claims:
- 25 A) An award of interest, including prejudgment interest at the legal rate;
- 26 B) Such other and further relief as the Court deems just and equitable; and,
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C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

Dated: January 31, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Nicholas J. De Blouw
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 31, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiff