

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

December 20, 2024
CA3415

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Adobe Veterinary Centers, LP
Certified Mail #9589071052701755844786
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 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), 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 Adobe Veterinary Centers, LP in California, including any employees staffed with Adobe Veterinary Centers, LP by a third party, and classified as non-exempt employees during the time period of December 20, 2023 until a date as determined by the Court. Our offices represent Plaintiff Megan Hacker (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Adobe Veterinary Centers, LP (“Defendant”). Plaintiff was employed by Defendant in California from August of 2004 to July of 2024. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and

Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 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 Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6
7 Attorneys for Plaintiff

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

9 **IN AND FOR THE COUNTY OF SANTA CLARA**

MEGAN HACKER, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

ADOBE VETERINARY CENTERS, LP, a California Limited Partnership; NATIONAL VETERINARY ASSOCIATES, INC., a Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246;
10. DISCRIMINATION AND RETALIATION VIOLATION OF FEHA; and,
11. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and,
12. FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF CAL. GOV. CODE § 12940(m).

DEMAND FOR A JURY TRIAL

Megan Hacker ("PLAINTIFF"), an individual, on behalf of herself and all other similarly situated current and former employees allege on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following.

THE PARTIES

1. Adobe Veterinary Centers, LP is a limited partnership that at all relevant times

1 mentioned herein conducted and continues to conduct substantial business in California.
2 National Veterinary Associates, Inc. is a corporation that at all relevant times mentioned herein
3 conducted and continues to conduct substantial business in California.

4 2. Adobe Veterinary Centers, LP and National Veterinary Associates, Inc. were the
5 joint employers of PLAINTIFF as evidenced by paycheck, standardized company employment
6 handbooks, by standardized policies and procedures, by the company PLAINTIFF performed
7 work for respectively and by the California Secretary of State Business Information which
8 includes but is not limited the same mailing and business addresses and same agent for service
9 of process, and are therefore jointly responsible as employers for the conduct alleged herein, and
10 are therefore collectively referred to herein as (“DEFENDANT”). DEFENDANT owns and
11 operates animal hospitals in California.

12 3. PLAINTIFF was employed by DEFENDANT in California from August of 2004
13 to July of 2024. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt
14 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
15 payment of minimum and overtime wages due for all time worked.

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

25 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
26 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
27 during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice
28 which failed to lawfully compensate these employees. DEFENDANT's policy and practice

alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time

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

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

27 14. The second component of PLAINTIFF' and other CALIFORNIA CLASS
28 Members' compensation is DEFENDANT's non-discretionary incentive program that paid

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

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

27 16. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required from time to time to work in excess of

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

20 17. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
21 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
22 actual amount of time these employees worked. Pursuant to the Industrial Welfare
23 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
24 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
25 employee was subject to the control of an employer, including all the time the employee was
26 permitted or suffered to permit this work. DEFENDANT required these employees to work
27 off the clock without paying them for all the time they were under DEFENDANT's control.
28 As such, DEFENDANT knew or should have known that PLAINTIFF and the other

1 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
2 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
3 working without their time being accurately recorded and without compensation at the
4 applicable minimum wage and overtime wage rates. To the extent that the time worked off
5 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
6 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
7 1197, and 1197.1.

8 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
9 other members of the CALIFORNIA CLASS with complete and accurate wage statements
10 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
11 Code § 226 provides that every employer shall furnish each of his or her employees with an
12 accurate itemized wage statement in writing showing, among other things, gross wages
13 earned and all applicable hourly rates in effect during the pay period and the corresponding
14 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
15 Members were paid on an hourly basis. As such, the wage statements should reflect all
16 applicable hourly rates during the pay period and the total hours worked, and the applicable
17 pay period in which the wages were earned pursuant to California Labor Code Section
18 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
19 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
20 wage statements failed to identify the accurate total hours worked each pay period. When
21 the hours shown on the wage statements were added up, they did not equal the actual total
22 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
23 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
24 itemized wage statement that lists all the requirements under California Labor Code 226 *et*
25 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
26 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
27 § 226.
28

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of the obligation to meet this burden, DEFENDANT violated the California Labor Code and
2 regulations promulgated thereunder as herein alleged.

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

14 **JURISDICTION AND VENUE**

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

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

25 **THE CALIFORNIA CLASS**

26 34. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
27 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
28

1 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
2 California class, defined as all individuals who are or previously were employed by Adobe
3 Veterinary Centers, LP and National Veterinary Associates, Inc. in California, including any
4 employees staffed with Adobe Veterinary Centers, LP and National Veterinary Associates,
5 Inc. by a third party, and classified as non-exempt employees (the "CALIFORNIA
6 CLASS") at any time during the period beginning four (4) years prior to the filing of this
7 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
8 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
9 Members is under five million dollars (\$5,000,000.00).

10 35. To the extent equitable tolling operates to toll claims by the CALIFORNIA
11 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
12 accordingly.

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

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

1 38. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 39. DEFENDANT violated the rights of the CALIFORNIA CLASS under
4 California law by:

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

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

- 17 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
18 that the joinder of all such persons is impracticable and the disposition
19 of their claims as a class will benefit the parties and the Court;
20 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
21 issues that are raised in this Complaint are common to the
22 CALIFORNIA CLASS will apply to every member of the
23 CALIFORNIA CLASS;
24 (c) The claims of the representative PLAINTIFF are typical of the claims
25 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
26 the other members of the CALIFORNIA CLASS, were classified as
27 non-exempt employees paid on an hourly basis who were subjected to
28

1 the DEFENDANT's deceptive practice and policy which failed to
2 provide the legally required meal and rest periods to the CALIFORNIA
3 CLASS and thereby underpaid compensation to PLAINTIFF and
4 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
5 result of DEFENDANT's employment practices. PLAINTIFF and the
6 members of the CALIFORNIA CLASS were and are similarly or
7 identically harmed by the same unlawful, deceptive and unfair
8 misconduct engaged in by DEFENDANT; and,

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

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

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

- 23 1) Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA CLASS which would establish
25 incompatible standards of conduct for the parties opposing the
26 CALIFORNIA CLASS; and/or,
27 2) Adjudication with respect to individual members of the
28 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 seek 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 duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

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

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

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

25 45. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
26 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
27 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
28 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
2 these employees, even though DEFENDANT enjoyed the benefit of this work, required
3 employees to perform this work and permitted or suffered to permit this work.
4 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
5 which these employees are entitled in order to unfairly cheat the competition and unlawfully
6 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
7 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
8 should be adjusted accordingly.

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

14 47. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 18 (a) Whether DEFENDANT unlawfully failed to correctly calculate and
19 pay compensation due to members of the CALIFORNIA LABOR
20 SUB-CLASS for missed meal and rest breaks in violation of the
21 California Labor Code and California regulations and the applicable
22 California Wage Order;
- 23 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS with accurate
25 itemized wage statements;
- 26 (c) Whether DEFENDANT has engaged in unfair competition by the
27 above-listed conduct;

1 (d) The proper measure of damages and penalties owed to the members of
2 the CALIFORNIA LABOR SUB-CLASS; and,

3 (e) Whether DEFENDANT's conduct was willful.

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

6 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
7 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
8 CLASS all wages due for overtime worked, for which DEFENDANT is
9 liable pursuant to Cal. Lab. Code § 1194;

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

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

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

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

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

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

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

1 the representative PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS that would make class certification
3 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
4 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
5 CLASS Members.

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

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

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

21 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
22 acted or refused to act on grounds generally applicable to the
23 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
24 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
25 whole in that DEFENDANT fails to pay all wages due. Including the
26 correct wages for all time worked by the members of the
27 CALIFORNIA LABOR SUB-CLASS as required by law;
28

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

- 8 1) The interests of the members of the CALIFORNIA LABOR
9 SUB-CLASS in individually controlling the prosecution or
10 defense of separate actions in that the substantial expense of
11 individual actions will be avoided to recover the relatively small
12 amount of economic losses sustained by the individual
13 CALIFORNIA LABOR SUB-CLASS Members when compared
14 to the substantial expense and burden of individual prosecution
15 of this litigation;
- 16 2) Class certification will obviate the need for unduly duplicative
17 litigation that would create the risk of:
- 18 A. Inconsistent or varying adjudications with respect to
19 individual members of the CALIFORNIA LABOR SUB-
20 CLASS, which would establish incompatible standards of
21 conduct for the DEFENDANT; and/or,
- 22 B. Adjudications with respect to individual members of the
23 CALIFORNIA LABOR SUB-CLASS would as a
24 practical matter be dispositive of the interests of the other
25 members not parties to the adjudication or substantially
26 impair or impede their ability to protect their interests;
- 27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA LABOR SUB-CLASS Members will

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

- 6 4) A class action is superior to other available methods for the fair
7 and efficient adjudication of this litigation because class
8 treatment will obviate the need for unduly and unnecessary
9 duplicative litigation that is likely to result in the absence of
10 certification of this action pursuant to Cal. Code of Civ. Proc. §
11 382.

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

- 14 (a) The questions of law and fact common to the CALIFORNIA LABOR
15 SUB-CLASS predominate over any question affecting only individual
16 CALIFORNIA LABOR SUB-CLASS Members;
- 17 (b) A Class Action is superior to any other available method for the fair
18 and efficient adjudication of the claims of the members of the
19 CALIFORNIA LABOR SUB-CLASS because in the context of
20 employment litigation a substantial number of individual
21 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
22 their rights individually out of fear of retaliation or adverse impact on
23 their employment;
- 24 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
25 numerous that it is impractical to bring all members of the
26 CALIFORNIA LABOR SUB-CLASS before the Court;
- 27
28

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

25
26 **FIRST CAUSE OF ACTION**

27 **For Unlawful Business Practices**

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

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

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

5 54. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
6 Code § 17021.

7 55. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
8 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
9 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
10 competition as follows:

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

19 Cal. Bus. & Prof. Code § 17203.

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

28 57. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
unfair in that these practices violate public policy, were immoral, unethical, oppressive,
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section

1 17203 of the California Business & Professions Code, including restitution of wages
2 wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

4
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

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

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

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

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

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

20 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 81. 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 82. 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 83. 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 84. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
19 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

21 90. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
22 from the overtime requirements of the law. None of these exemptions are applicable to the
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
25 subject to a valid collective bargaining agreement that would preclude the causes of action
26 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of
27 herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
28 of non-negotiable, non-waiveable rights provided by the State of California.

1 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

99. DEFENDANT further violates 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 meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

10. 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.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

101. 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.

102. 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.

103. 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.

104. 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)

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

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

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

25 107. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
26 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
27 wage statements which failed to show, among other things, the correct gross and net wages
28 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
California Labor Code Section 226(a). The wage statements DEFENDANT provided to
PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify

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

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

21
22 **SEVENTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 2802]**

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

1 109. 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.

4 110. 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.

10 111. 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.

28 112. 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
4 **EIGHTH CAUSE OF ACTION**

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

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

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

8 **and Against All Defendants)**

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

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

13 As used in this article:

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

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

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

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

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

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

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

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

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

1 DEFENDANT underpaid waiting time penalties to PLAINTIFF, and other CALIFORNIA
2 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
3 PLAINTIFF's, and the CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
4 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
5 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to
6 provide compensation for earned, accrued and vested vacation and holiday time, as well as
7 the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
8 unlawful, unfair and deceptive practice to the detriment of PLAINTIFF, and the members of
9 the CALIFORNIA LABOR SUB-CLASS. DEFENDANT's uniform practice and policy of
10 failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday time
11 accumulated at employment termination violated and continues to violate Section 227.3 of
12 the California Labor Code.

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

20 ///

21 **NINTH CAUSE OF ACTION**

22 **For Failure to Pay Sick Pay Wages**

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

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

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

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

14 122. As a matter of policy and practice, DEFENDANT pays sick pay wages to
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
16 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
17 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
18 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
19 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
20 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
21 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
22 employee's total wages, not including overtime premium pay, by the employee's total hours
23 worked in the full pay periods of the prior 90 days of employment. As a result,
24 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
25 CALIFORNIA LABOR-SUB-CLASS.

26 123. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
27 during each calendar month and are to be paid no later than the payday for the next regular
28 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically

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

16 124. As alleged herein and as a matter of policy and practice, DEFENDANT
17 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
18 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
19 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
20 among other Labor Code provisions. PLAINTIFF are informed and believe that
21 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
22 mandates of the Labor Code as it relates to PLAINTIFF' allegations, especially since the
23 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
24 include those benefits to which an employee is entitled as a part of his or her compensation,
25 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
26 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
27 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
28

1 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
2 penalties.

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

7
8
9
10 **TENTH CAUSE OF ACTION**

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

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

15 **(By PLAINTIFF Against All Defendants)**

16 126. PLAINTIFF realleges and incorporates by reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 127. In or around late September of 2023, PLAINTIFF let DEFENDANT's
19 Director of Divisional Operations of California Golden Gate, Leah Vasquez, know of
20 PLAINTIFF's medical disabilities and need for medical accommodations. PLAINTIFF
21 suffers from complex regional pain syndrome and has struggled with endometriosis for
22 many years, which make it very difficult for PLAINTIFF to travel because the vibrations
23 intensify the pain PLAINTIFF experiences. In or around early October of 2023,
24 PLAINTIFF met with the Senior Human Resources Business Partner General Practice,
25 Amber Lowe, to let her know of PLAINTIFF's needs for medical accommodations.
26 DEFENDANT denied PLAINTIFF's good faith request for medical accommodations and
27 placed her on medical leave without giving PLAINTIFF notice. As a result of PLAINTIFF's
28 good faith request for medical accommodations due to her medical disabilities,

1 DEFENDANT denied PLAINTIFF employment opportunities, privileges, and wages under
2 the Labor Code. As a result of PLAINTIFF's good faith request for medical
3 accommodations, and in direct retaliation of those complaints, DEFENDANT wrongfully
4 terminated PLAINTIFF's employment on July 26, 2024. Prior to filing this action
5 PLAINTIFF exhausted her administrative remedies by filing a timely administrative
6 complaint with the Department of Fair Employment and Housing ("DFEH") and received a
7 DFEH Right to Sue letter on December 20, 2024.

8 128. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
9 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
10 including the following bases for liability:

11 a. Taking adverse employment actions against PLAINTIFF, including
12 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
13 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
14 PLAINTIFF's disability in violation of Government Code Section 12940(a);

15 b. Harassing PLAINTIFF and/or creating a hostile work environment, in
16 whole or in part on the basis of PLAINTIFF's disability;

17 c. Failing to take all reasonable steps to prevent discrimination and
18 harassment based on national origin in violation of Government Code section 12940(k);

19 d. Retaliating against PLAINTIFF for seeking to exercise rights
20 guaranteed under FEHA, participating in protected activities, and/or opposing
21 DEFENDANT's failure to provide such rights, in violation of Government Code Section
22 12940(h).

23 129. As a proximate result of DEFENDANT's willful, knowing, and intentional
24 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
25 substantial losses of earnings and other employment benefits.

26 130. As a proximate result of DEFENDANT's willful, knowing, and intentional
27 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
28

1 humiliation, emotional distress, and physical and mental pain and anguish, all to
2 PLAINTIFF's damage in a sum according to proof.

3 131. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
4 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
5 reasonable attorneys' fees and costs (including expert costs) in an amount according to
6 proof.

7 132. DEFENDANT's misconduct was committed intentionally, in a malicious,
8 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
9 against DEFENDANT.

10 **ELEVENTH CAUSE OF ACTION**

11 **For Failure to Provide Reasonable Accommodation**

12 **[Cal. Gov. Code § 12940(m)]**

13 **(By PLAINTIFF and Against All Defendants)**

14 133. PLAINTIFF realleges and incorporates by reference, as though fully set forth
15 herein, the prior paragraphs of this Complaint.

16 134. DEFENDANT was an employer who met all of the requirements set forth under
17 the California Fair Employment and Housing Act.

18 135. PLAINTIFF suffered from a physical disability as defined under Cal. Gov. Code
19 § 12926(m).

20 136. DEFENDANT was aware that PLAINTIFF suffered from a physical disability
21 as set forth herein.

22 137. PLAINTIFF sent DEFENDANT a request for accommodation based on her
23 physical disabilities. PLAINTIFF requested to continue working from home, which would
24 prevent her from being forced to travel and prevent her constant pain to be exasperated by the
25 travel. However, PLAINTIFF's request for accommodation fell on deaf ears, as DEFENDANT
26 did not allow her to continue working from home. Ultimately, DEFENDANT forced
27 PLAINTIFF on to administrative leave and subsequently terminated her employment on July
28 26, 2024.

138. DEFENDANT failed to provide PLAINTIFF with reasonable accommodation for her physical disabilities.

139. As a direct and proximate result of DEFENDANT refusing to provide PLAINTIFF with reasonable accommodation, PLAINTIFF was met with a series of adverse employment actions as set forth herein. As a further direct result of DEFENDANT's failure to provide PLAINTIFF with a reasonable accommodation, PLAINTIFF was harmed in the form of emotional and physical pain and suffering.

140. DEFENDANT's failure to provide reasonable accommodation was a substantial factor in causing PLAINTIFF's harm.

141. The actions alleged herein were taken by managing agents and/or officers of DEFENDANT and/or ratified by managing agents and/or officers of DEFENDANT. In so doing, said managing agents and/or officers of DEFENDANT acted with malice and oppression as those terms are used in California Code of Civil Procedure § 3294. As such, PLAINTIFF is entitled to an award of punitive damages.

142. PLAINTIFF is also entitled to recover reasonable attorney's fees and costs pursuant to Cal. Gov. Code § 12965(b).

TWELFTH CAUSE OF ACTION

For Wrongful Termination in Violation of Public Policy

(By PLAINTIFF Against All Defendants)

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

144. In or around late September of 2023, PLAINTIFF let DEFENDANT's Director of Divisional Operations of California Golden Gate, Leah Vasquez, know of PLAINTIFF's medical disabilities and need for medical accommodations. PLAINTIFF suffers from complex regional pain syndrome and has struggled with endometriosis for many years, which make it very difficult for PLAINTIFF to travel because the vibrations intensify the pain PLAINTIFF experiences. In or around early October of 2023,

1 PLAINTIFF met with the Senior Human Resources Business Partner General Practice,
2 Amber Lowe, to let her know of PLAINTIFF's needs for medical accommodations.
3 DEFENDANT denied PLAINTIFF's good faith request for medical accommodations and
4 placed her on medical leave without giving PLAINTIFF notice. As a result of PLAINTIFF's
5 good faith request for medical accommodations due to her medical disabilities,
6 DEFENDANT denied PLAINTIFF employment opportunities, privileges, and wages under
7 the Labor Code. As a result of PLAINTIFF's good faith request for medical
8 accommodations, and in direct retaliation of those complaints, DEFENDANT wrongfully
9 terminated PLAINTIFF's employment on July 26, 2024.

10 145. Within the State of California there exists a substantial and fundamental public
11 policy, set forth in the California Government Code §12900 et seq., which forbids age
12 and/or medical condition harassment/discrimination, retaliation, and wrongful termination.
13 Unlawful harassment includes the right to be free from unwanted, offensive racial
14 harassment, and the right to protest such conduct without fear of retaliation or further harm.
15 This public policy of the state is one that benefits the public at large and guarantees the
16 rights of an employee to perform their work free from age and/or medical condition
17 harassment/discrimination/retaliation.

18 146. DEFENDANT terminated PLAINTIFF's employment in violation of various
19 fundamental public policies underlying both state and federal laws. Specifically,
20 PLAINTIFF's employment was terminated in part because of her protected status(i.e.,
21 disability, medical leave, and/or good faith complaints). These actions were in violation of
22 FEHA, the California Constitution, and California Labor Code Section 1102.5.

23 147. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial
24 losses in earnings and employment benefits and emotional distress in an amount to be
25 determined according to proof at trial.

26 148. In doing the acts herein alleged, DEFENDANT acted with malice and
27 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is
28

1 entitled to exemplary and punitive damages from DEFENDANT in an amount to be
2 determined to punish DEFENDANT and to deter such wrongful conduct in the future.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF pray for judgment against each Defendant, jointly
5 and severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

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

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

- 21 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh,
22 Eighth, and Ninth Causes of Action asserted by the CALIFORNIA
23 LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ.
24 Proc. § 382;
- 25 B) Compensatory damages, according to proof at trial, including
26 compensatory damages for minimum and overtime compensation due
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28

CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
- G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the Tenth, Eleventh, and Twelfth Causes of Action:

- A) For all special damages which were sustained as a result of DEFENDANT's conduct, including, but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the retaliatory practices of DEFENDANT; and,
- B) For all exemplary damages, according to proof, which were sustained as a result of DEFENDANT's conduct.

4. On all claims:

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

6 Dated: December 13, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
7 LLP
8

9
10
11 By: _____
12

13 Norman B. Blumenthal

14 Nicholas J. De Blouw

15 *Attorneys for PLAINTIFF*
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

Dated: December 13, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: _____
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for PLAINTIFF