

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

**September 10, 2024
CA3430**

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

**Labor and Workforce Development Agency
Online Filing**

**Petvet Care Centers, LLC
Certified Mail #9589071052701737668065
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD., Suite 700
GLENDALE, CA 91203**

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 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Petvet Care Centers (California), Inc. and/or Petvet Care Centers, LLC in California, including any employees staffed with Petvet Care Centers (California), Inc. and/or Petvet Care Centers, LLC by a third party, and classified as non-exempt employees during the time period of September 10, 2023 until a date as determined by the Court. Our offices represent Plaintiff Renee Ramirez (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Petvet Care Centers (California), Inc. and/or Petvet Care Centers, LLC (“Defendant”). Plaintiff has been employed by Defendant in California since July of 2022. Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw
Nicholas J. De Blouw, Esq.

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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 Attorneys for Plaintiff

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

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

10 RENEE RAMIREZ, an individual, on behalf of
11 herself and on behalf of all persons similarly
12 situated,

13 Plaintiff,

14 vs.

15 PETVET CARE CENTERS (CALIFORNIA),
16 INC., a Corporation; PETVET CARE CENTERS,
17 LLC, a Limited Liability Company; and DOES 1
through 50, inclusive,

18 Defendants.
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Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB CODE §§201-203, 233, 246; and,
9. DISCRIMINATION AND RETALIATION VIOLATION OF FEHA; and,
10. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *et seq.*

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Petvet Care Centers (California), Inc. is a corporation that at all relevant times
7 mentioned herein conducted and continues to conduct substantial business in California.

8 2. Petvet Care Centers, LLC is a limited liability company that at all relevant times
9 mentioned herein conducted and continues to conduct substantial business in California.

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

17 4. DEFENDANT owns and operates veterinary hospitals in California.

18 5. PLAINTIFF is currently employed by DEFENDANT in California.
19 PLAINTIFF’S employment with DEFENDANT started in July of 2022. PLAINTIFF has been
20 at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and
21 entitled to the legally required meal and rest periods and payment of minimum and overtime
22 wages due for all time worked.

23 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,
24 defined as all individuals who are or previously were employed by Petvet Care Centers
25 (California), Inc. and/or Petvet Care Centers, LLC in California, including any employees
26 staffed with Petvet Care Centers (California), Inc. and/or Petvet Care Centers, LLC by a third
27 party, and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
28 during the period beginning four (4) years prior to the filing of this Complaint and ending on

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

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

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

24 9. The agents, servants and/or employees of the Defendants and each of them
25 acting on behalf of the Defendants acted within the course and scope of his, her or its
26 authority as the agent, servant and/or employee of the Defendants, and personally
27 participated in the conduct alleged herein on behalf of the Defendants with respect to the
28 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to

1 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
2 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
3 of the conduct of the Defendants' agents, servants and/or employees.

4 5 **THE CONDUCT**

6 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
7 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
8 worked, meaning the time during which an employee is subject to the control of an
9 employer, including all the time the employee is suffered or permitted to work.
10 DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without
11 paying them for all the time they are under DEFENDANT's control. Among other things,
12 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
13 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
14 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
15 break. DEFENDANT, as a matter of established company policy and procedure, administers
16 a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
17 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the
18 course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less
19 than they would have been paid had they been paid for actual recorded time rather than
20 "rounded" time. Additionally, DEFENDANT engages in the practice of requiring
21 PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clock in that
22 DEFENDANT, as a condition of employment, required these employees to submit to
23 mandatory temperature checks and symptom questionnaires for COVID-19 screening prior
24 to clocking into DEFENDANT's timekeeping system for the workday. As a result,
25 PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime
26 wage compensation, and off-duty meal breaks by working without their time being correctly
27 recorded and without compensation at the applicable rates. DEFENDANT's policy and
28

1 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
2 worked, is evidenced by DEFENDANT's business records.

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

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

22 13. As a result of their rigorous work schedules, PLAINTIFF and other
23 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
24 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
25 and other CALIFORNIA CLASS Members were required from time to time to perform
26 work as ordered by DEFENDANT for more than five (5) hours during some shifts without
27 receiving a meal break. Further, DEFENDANT from time to time failed to provide
28 PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for

1 some workdays in which these employees were required by DEFENDANT to work ten (10)
2 hours of work. DEFENDANT also engaged in the practice of rounding the meal period
3 times to avoid paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members.
4 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
5 without additional compensation and in accordance with DEFENDANT's corporate policy
6 and practice.

7 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
8 CALIFORNIA CLASS Members were also required from time to time to work in excess of
9 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
10 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
11 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
12 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
13 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
14 worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
15 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
16 the applicable California Wage Order requires employers to provide employees with off-
17 duty rest periods, which the California Supreme Court defined as time during which an
18 employee is relieved from all work related duties and free from employer control. In so
19 doing, the Court held that the requirement under California law that employers authorize and
20 permit all employees to take rest period means that employers must relieve employees of all
21 duties and relinquish control over how employees spend their time which includes control
22 over the locations where employees may take their rest period. Employers cannot impose
23 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
24 back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA
25 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
26 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
27 premises during their rest period.
28

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **JURISDICTION AND VENUE**

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

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

1 committed the wrongful conduct herein alleged in this County against members of the
2 CALIFORNIA CLASS.

3
4 **THE CALIFORNIA CLASS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
22 and Eighth causes Action on behalf of a California sub-class, defined as all members of the
23 CALIFORNIA CLASS who are or previously were employed by Petvet Care Centers
24 (California), Inc. and/or Petvet Care Centers, LLC in California, including any employees
25 staffed with Petvet Care Centers (California), Inc. and/or Petvet Care Centers, LLC by a
26 third party, and classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
27 CLASS") at any time during the period three (3) years prior to the filing of the complaint
28 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-

1 CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
2 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five
3 million dollars (\$5,000,000.00).

4 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
5 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
6 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
7 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
9 these employees, even though DEFENDANT enjoyed the benefit of this work, required
10 employees to perform this work and permitted or suffered to permit this work.
11 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
12 which these employees are entitled in order to unfairly cheat the competition and unlawfully
13 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
14 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
15 should be adjusted accordingly.

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

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

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

- 25 (a) Whether DEFENDANT unlawfully failed to correctly calculate and
26 pay compensation due to members of the CALIFORNIA LABOR
27 SUB-CLASS for missed meal and rest breaks in violation of the
28

California Labor Code and California regulations and the applicable California Wage Order;

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

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

- (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;

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

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

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

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

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

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

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

- 1 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
2 acted or refused to act on grounds generally applicable to the
3 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
4 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
5 whole in that DEFENDANT fails to pay all wages due. Including the
6 correct wages for all time worked by the members of the
7 CALIFORNIA LABOR SUB-CLASS as required by law;
- 8 (c) Common questions of law and fact predominate as to the members of
9 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
10 and violations of California Law as listed above, and predominate over
11 any question affecting only individual CALIFORNIA LABOR SUB-
12 CLASS Members, and a Class Action is superior to other available
13 methods for the fair and efficient adjudication of the controversy,
14 including consideration of:
- 15 1) The interests of the members of the CALIFORNIA LABOR
16 SUB-CLASS in individually controlling the prosecution or
17 defense of separate actions in that the substantial expense of
18 individual actions will be avoided to recover the relatively small
19 amount of economic losses sustained by the individual
20 CALIFORNIA LABOR SUB-CLASS Members when compared
21 to the substantial expense and burden of individual prosecution
22 of this litigation;
- 23 2) Class certification will obviate the need for unduly duplicative
24 litigation that would create the risk of:
- 25 A. Inconsistent or varying adjudications with respect to
26 individual members of the CALIFORNIA LABOR SUB-
27 CLASS, which would establish incompatible standards of
28 conduct for the DEFENDANT; and/or,

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

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

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

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

21 (a) The questions of law and fact common to the CALIFORNIA LABOR
22 SUB-CLASS predominate over any question affecting only individual
23 CALIFORNIA LABOR SUB-CLASS Members;

24 (b) A Class Action is superior to any other available method for the fair
25 and efficient adjudication of the claims of the members of the
26 CALIFORNIA LABOR SUB-CLASS because in the context of
27 employment litigation a substantial number of individual
28 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting

1 their rights individually out of fear of retaliation or adverse impact on
2 their employment;

3 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
4 numerous that it is impractical to bring all members of the
5 CALIFORNIA LABOR SUB-CLASS before the Court;

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

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

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

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

21 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANT. The
23 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
24 CLASS Members who worked for DEFENDANT in California at any
25 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

26 (i) Class treatment provides manageable judicial treatment calculated to
27 bring a efficient and rapid conclusion to all litigation of all wage and
28

1 hour related claims arising out of the conduct of DEFENDANT as to
2 the members of the CALIFORNIA LABOR SUB-CLASS.

3
4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

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

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

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

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

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

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

25 Cal. Bus. & Prof. Code § 17203.

26 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
27 engage in a business practice which violates California law, including but not limited to, the
28 applicable Industrial Wage Order(s), the California Code of Regulations and the California
Labor Code including Sections 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802
and the Fair Labor Standards Act and federal regulations promulgated thereunder, for which
this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof.

1 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
2 unfair competition, including restitution of wages wrongfully withheld.

3 50. By the conduct alleged herein, DEFENDANT's practices were unlawful and
4 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
5 unscrupulous or substantially injurious to employees, and were without valid justification or
6 utility for which this Court should issue equitable and injunctive relief pursuant to Section
7 17203 of the California Business & Professions Code, including restitution of wages
8 wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

8
9 **SECOND CAUSE OF ACTION**

10 **For Failure To Pay Minimum Wages**

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

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

13 **and Against All Defendants)**

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

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

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

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

1 65. DEFENDANT maintained a wage practice of paying PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
3 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
4 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
5 other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

27 70. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS for the true time they worked, PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
3 injury in amounts which are presently unknown to them and which will be ascertained
4 according to proof at trial.

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

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

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

1 conduct as alleged herein was willful, intentional and not in good faith. Further,
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
3 and recover statutory costs.

4
5 **THIRD CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

7 **[Cal. Lab. Code § 510]**

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

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

13 75. 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 pay these employees for all overtime worked, including, work
17 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
18 and/or forty (40) hours in any workweek.

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

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

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

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

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

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

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

1 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
3 overtime worked that they are entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

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

16 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

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

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

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

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

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2 **SEVENTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

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

9 **EIGHTH CAUSE OF ACTION**

10 **For Failure to Pay Sick Pay Wages**

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

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

13 **and Against All Defendants)**

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

17 105. Cal Lab. Code § 233 provides that an employer must permit an employee to
18 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
19 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
20 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
21 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
22 right to sick pay wages, which an employer must calculate and compensate based on one of
23 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
24 same manner as the regular rate of pay for the workweek in which the employee uses paid
25 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
26 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
27 total wages, not including overtime premium pay, by the employee's total hours worked in
28

1 the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218 and
2 233, employees may sue to recover underpaid sick pay wages as damages.

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

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

108. As alleged herein and as a matter of policy and practice, DEFENDANT routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246, among other Labor Code provisions. PLAINTIFF is informed and believes that DEFENDANT was advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, *and sick pay*." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable penalties.

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

NINTH CAUSE OF ACTION

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

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

(By PLAINTIFF Against All Defendants)

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

1 111. In June of 2024 PLAINTIFF was in an accident and suffered injuries.
2 PLAINTIFF requested protected leave from DEFENDANT for her injuries and took
3 approximately 4 weeks off from work to heal her injuries. Upon PLAINTIFF's return to
4 work on or about July 17, 2024, PLAINTIFF experienced a hostile work environment and
5 retaliation from DEFENDANT for taking leave. Specifically, DEFENDANT fabricated
6 performance issues that were never a concern for PLAINTIFF prior to taking her leave for
7 her injuries, and PLAINTIFF was met with hostile and rude conduct by her superiors,
8 specifically, DEFENDANT's hospital manager, Miranda Murphee. As a result of
9 PLAINTIFF's good faith complaints and her taking leave for her injuries, DEFENDANT
10 fabricated performance and conduct issues about PLAINTIFF, denied PLAINTIFF
11 employment opportunities, privileges, and wages under the Labor Code, and PLAINTIFF
12 was plagued with ongoing work pressures, obligations, and mistreatment by her supervisors
13 as a result of PLAINTIFF's willingness to protected leave and raise formal complaints
14 described herein. Furthermore, the continuous stress and discrimination at work has caused
15 PLAINTIFF to feel afraid of going into work each day. As a result of the protected leave
16 and good faith complaints PLAINTIFF made to DEFENDANT regarding the discriminatory
17 practices stated above, and in direct retaliation for taking leave for her injuries those
18 complaints, DEFENDANT has denied PLAINTIFF work promotions and proper wages.
19 Prior to filing this action PLAINTIFF exhausted her administrative remedies by filing a
20 timely administrative complaint with the Department of Fair Employment and Housing
21 ("DFEH") and received a DFEH Right to Sue letter on September 9, 2024.

22 110. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
23 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
24 including the following bases for liability:

25 a. Taking adverse employment actions against PLAINTIFF, including
26 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
27 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
28

1 PLAINTIFF taking leave for her injuries/FMLA leave in violation of Government Code
2 Section 12940(a);

3 b. Harassing PLAINTIFF and/or creating a hostile work environment, in
4 whole or in part on the basis of PLAINTIFF taking FMLA/protected leave for her injuries;

5 c. Failing to take all reasonable steps to prevent discrimination and
6 harassment in violation of Government Code section 12940(k);

7 d. Retaliating against PLAINTIFF for seeking to exercise rights
8 guaranteed under FEHA, participating in protected activities, and/or opposing
9 DEFENDANT's failure to provide such rights, in violation of Government Code Section
10 12940(h).

11 111. As a proximate result of DEFENDANT's willful, knowing, and intentional
12 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
13 substantial losses of earnings and other employment benefits.

14 112. As a proximate result of DEFENDANT's willful, knowing, and intentional
15 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
16 humiliation, emotional distress, and physical and mental pain and anguish, all to
17 PLAINTIFF's damage in a sum according to proof.

18 113. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
19 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
20 reasonable attorneys' fees and costs (including expert costs) in an amount according to
21 proof.

22 114. DEFENDANT's misconduct was committed intentionally, in a malicious,
23 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
24 against DEFENDANT.

25 **TENTH CAUSE OF ACTION**

26 **Retaliation**

27 **[Violation of Cal. Lab. Code § 1102.5, *et seq.*]**

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

1 115. PLAINTIFF realleges and incorporates by reference, as though fully set forth
2 herein, the prior paragraphs of this Complaint.

3 116. At all relevant times, Labor Code section 1102.5 was in effect and was
4 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against
5 any employee, including PLAINTIFF, for raising complaints of illegality and/or belief that
6 the employee may disclose illegality.

7 117. In June of 2024 PLAINTIFF was in an accident and suffered injuries.
8 PLAINTIFF requested protected leave from DEFENDANT for her injuries and took
9 approximately 4 weeks off from work to heal her injuries. Upon PLAINTIFF's return to
10 work on or about July 17, 2024, PLAINTIFF experienced a hostile work environment and
11 retaliation from DEFENDANT for taking leave. Specifically, DEFENDANT fabricated
12 performance issues that were never a concern for PLAINTIFF prior to taking her leave for
13 her injuries, and PLAINTIFF was met with hostile and rude conduct by her superiors,
14 specifically, DEFENDANT's hospital manager, Miranda Murphee. As a result of
15 PLAINTIFF's good faith complaints and her taking leave for her injuries, DEFENDANT
16 fabricated performance and conduct issues about PLAINTIFF, denied PLAINTIFF
17 employment opportunities, privileges, and wages under the Labor Code, and PLAINTIFF
18 was plagued with ongoing work pressures, obligations, and mistreatment by her supervisors
19 as a result of PLAINTIFF's willingness to protected leave and raise formal complaints
20 described herein. Furthermore, the continuous stress and discrimination at work has caused
21 PLAINTIFF to feel afraid of going into work each day. As a result of the protected leave
22 and good faith complaints PLAINTIFF made to DEFENDANT regarding the discriminatory
23 practices stated above, and in direct retaliation for taking leave for her injuries those
24 complaints, DEFENDANT has denied PLAINTIFF work promotions and proper wages.

25 118. As a proximate result of DEFENDANT'S willful, knowing, and intentional
26 violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to suffer
27 humiliation, emotional distress, and mental and physical pain and anguish, all to her damage
28 in a sum according to proof.

1 119. As a result of DEFENDANT'S adverse employment actions against
2 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
3 proof.

4 120. DEFENDANT'S misconduct was committed intentionally, in a malicious,
5 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
6 against defendants.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
10 severally, as follows:

11 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an 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 PLAINTIFF for the Ninth and Tenth 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:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

1 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
3 and/or §2802.
4

5
6
7 Dated: September 9, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

8
9 By: _____

10 Norman B. Blumenthal
Nicholas J. De Blouw

11 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

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

Dated: September 9, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

Attorneys for Plaintiff