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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

ANTHONY SANDOVAL, an individual, on
behalf of himself and on behalf of all persons
similarly situated, and on behalf of the State of
California, as a Private Attorney General;

Plaintiff,

vs.

BRIOTIX HEALTH, LIMITED
PARTNERSHIP, a Limited Partnership; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 24CV025760

**FIRST AMENDED 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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
 9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-203, 233, 246; and
 10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]
- DEMAND FOR A JURY TRIAL**

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

4
5 **THE PARTIES**

6 1. Briotix Health, Limited Partnership ("DEFENDANT") is a limited partnership that at
7 all relevant times mentioned herein conducted and continues to conduct substantial business in
8 California.

9 2. DEFENDANT provides outpatient healthcare services in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from February of 2023 to
11 September of 2024. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined
15 as all individuals who are or previously were employed by DEFENDANT in California, including any
16 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees (the
17 “CALIFORNIA CLASS”) at any time during the period beginning on December 17, 2020 and ending
18 on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
19 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
20 (\$5,000,000.00).

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

1 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current
2 unlawful conduct, and all other appropriate legal and equitable relief.

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

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

20 21 THE CONDUCT

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

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

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

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

1 premium pay. Management and supervisors described the incentive program to potential and new
2 employees as part of the compensation package. As a matter of law, the incentive compensation
3 received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the
4 “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime
5 compensation and meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS
6 Members by DEFENDANT.

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

19 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA
20 CLASS Members were also required from time to time to work in excess of four (4) hours without
21 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
22 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from
23 time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
24 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at
25 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
26 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one hour
27 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers to
28 provide employees with off-duty rest periods, which the California Supreme Court defined as time

1 during which an employee is relieved from all work related duties and free from employer control.
2 In so doing, the Court held that the requirement under California law that employers authorize and
3 permit all employees to take rest period means that employers must relieve employees of all duties
4 and relinquish control over how employees spend their time which includes control over the
5 locations where employees may take their rest period. Employers cannot impose controls that
6 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
7 DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
8 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFF and
9 other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

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

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

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

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

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

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

1 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
2 Section 246.

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

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

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

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

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

21
22 **JURISDICTION AND VENUE**

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

27 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and

1 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in
2 this County and/or conducts substantial business in this County, and (ii) committed the wrongful
3 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

4
5 **THE CALIFORNIA CLASS**

6 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
7 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, (the "UCL") as a Class Action,
8 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals
9 who are or previously were employed by DEFENDANT in California, including any employees
10 staffed with DEFENDANT by a third party, and classified as non-exempt employees (the
11 "CALIFORNIA CLASS") at any time during the period beginning December 17, 2020 and ending
12 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
13 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
14 dollars (\$5,000,000.00).

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

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

24 28. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
25 CLASS Member was paid accurately for all meal and rest breaks missed as required by California
26 laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place
27 during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to
28 ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This

1 common business practice is applicable to each and every CALIFORNIA CLASS Member can be
2 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
3 Professions Code §§ 17200, (the "UCL") as causation, damages, and reliance are not elements of
4 this claim.

5 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
6 CLASS Members is impracticable.

7 30. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
8 law by:

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

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

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

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

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

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

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

- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
28 dispositive of interests of the other members not party to the

1 adjudication or substantially impair or impede their ability to protect
2 their interests.

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

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

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

21 1) The interests of the members of the CALIFORNIA CLASS in
22 individually controlling the prosecution or defense of separate actions
23 in that the substantial expense of individual actions will be avoided to
24 recover the relatively small amount of economic losses sustained by
25 the individual CALIFORNIA CLASS Members when compared to
26 the substantial expense and burden of individual prosecution of this
27 litigation;
28

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 CALIFORNIA CLASS would as a practical matter be
9 dispositive of the interests of the other members not parties to
10 the adjudication or substantially impair or impede their ability
11 to protect their interests;
- 12 3) In the context of wage litigation because a substantial number of
13 individual CALIFORNIA CLASS Members will avoid asserting their
14 legal rights out of fear of retaliation by DEFENDANT, which may
15 adversely affect an individual's job with DEFENDANT or with a
16 subsequent employer, the Class Action is the only means to assert
17 their claims through a representative; and,
- 18 4) A class action is superior to other available methods for the fair and
19 efficient adjudication of this litigation because class treatment will
20 obviate the need for unduly and unnecessary duplicative litigation
21 that is likely to result in the absence of certification of this action
22 pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

1 claims arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA CLASS.

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

8
9 **THE CALIFORNIA LABOR SUB-CLASS**

10 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
11 and Ninth causes Action on behalf of a California sub-class, defined as all members of the
12 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California,
13 including any employees staffed with DEFENDANT by a third party, and classified as non exempt
14 employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning
15 on December 17, 2021 and ending on the date as determined by the Court (the "CALIFORNIA
16 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
17 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
18 five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-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 LABOR SUB-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 LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

42. 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:

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

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

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

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

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

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

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

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

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS
4 Members who worked for DEFENDANT in California at any time during the
5 CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 6 (i) Class treatment provides manageable judicial treatment calculated to bring a
7 efficient and rapid conclusion to all litigation of all wage and hour related
8 claims arising out of the conduct of DEFENDANT as to the members of the
9 CALIFORNIA LABOR SUB-CLASS.

10
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

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

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

18 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §
19 17021.

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

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

28 Cal. Bus. & Prof. Code § 17203.

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

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

14 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
15 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated meal
16 and rest periods, the required amount of compensation for missed meal and rest periods and
17 overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse all
18 necessary business expenses incurred, and failed to provide Fair Labor Standards Act overtime
19 wages due for overtime worked as a result of failing to include non-discretionary incentive
20 compensation into their regular rates of pay for purposes of computing the proper overtime pay due
21 to a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
22 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, and for
23 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §
24 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

12
13 **SECOND CAUSE OF ACTION**

14 **For Failure To Pay Minimum Wages**

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

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

17 **and Against All Defendants)**

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

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

25 61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
26 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
27 minimum so fixed is unlawful.

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

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

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

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

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

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

27 68. 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-CLASS

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

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

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

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

1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

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

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

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

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

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

21 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
22 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
23 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including
24 overtime work.

25 77. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
26 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a
27 policy and practice that failed to accurately record overtime worked by PLAINTIFF and other
28 CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
2 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

1 accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
2 employees.

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

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

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

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

1 Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
2 SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not
3 in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are
4 entitled to seek and recover statutory costs.

5
6 **FOURTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

9
10
11 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

9
10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

17 95. Cal. Labor Code § 226 provides that an employer must furnish employees with
18 an "accurate itemized" statement in writing showing:

- 19 (1) gross wages earned,
20 (2) total hours worked by the employee, except for any employee whose compensation is
21 solely based on a salary and who is exempt from payment of overtime under subdivision (a)
22 of Section 515 or any applicable order of the Industrial Welfare Commission,
23 (3) the number of piece-rate units earned and any applicable piece rate if the employee is
24 paid on a piece-rate basis,
25 (4) all deductions, provided that all deductions made on written orders of the employee may
26 be aggregated and shown as one item,
27 (5) net wages earned,
28 (6) the inclusive dates of the period for which the employee is paid,
29 (7) the name of the employee and his or her social security number, except that by January
30 1, 2008, only the last four digits of his or her social security number or an employee
31 identification number other than a social security number may be shown on the itemized
32 statement,
33 (8) the name and address of the legal entity that is the employer, and
34 (9) all applicable hourly rates in effect during the pay period and the corresponding number
35 of hours worked at each hourly rate by the employee.

1 96. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
3 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
4 226 provides that every employer shall furnish each of his or her employees with an accurate
5 itemized wage statement in writing showing, among other things, gross wages earned and all
6 applicable hourly rates in effect during the pay period and the corresponding amount of time
7 worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were
8 paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates
9 during the pay period and the total hours worked, and the applicable pay period in which the wages
10 were earned pursuant to California Labor Code Section 226(a). The wage statements
11 DEFENDANT provided to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
12 failed to identify such information. More specifically, the wage statements failed to identify the
13 accurate total hours worked each pay period. When the hours shown on the wage statements were
14 added up, they did not equal the actual total hours worked during the pay period in violation of Cal.
15 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT
16 failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
17 California Labor Code 226. As a result, DEFENDANT from time to time provided PLAINTIFF and
18 the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
19 violated Cal. Lab. Code § 226.

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

1 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of
2 the CALIFORNIA LABOR SUB-CLASS herein).

3
4 **SEVENTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

9
10 **EIGHTH CAUSE OF ACTION**

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

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

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

14 **and Against All Defendants)**

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

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

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

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

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

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

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

1 address. The date of the mailing shall constitute the date of payment for
2 purposes of the requirement to provide payment within 72 hours of the notice of
3 quitting.

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

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

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

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

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

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

20
21 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

113. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for the next regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an employee, wages earned and unpaid at the time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive

1 all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the
2 employee has given 72-hour notice of his or her intention to quit, in which case the employee is
3 entitled to his or her wages at the time of quitting. The Labor Code penalizes untimely payments.
4 For example, Cal. Lab. Code § 203 provides that if an employer willfully fails to pay wages owed
5 in accordance with Cal. Lab. Code §§ 201-202, then the wages of the employee shall continue as a
6 penalty from the due date, and at the same rate until paid, but the wages shall not continue for more
7 than thirty (30) days. Cal. Lab. Code §§ 203 and 218, employees may sue to recover applicable
8 penalties.

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

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

26 ///

27 ///

28 ///

1 **TENTH CAUSE OF ACTION**

2 For Violation of the Private Attorneys General Act

3 [Cal. Lab. Code §§ 2698, et seq.]

4 (By PLAINTIFF and Against All Defendants)

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

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

16 118. PLAINTIFF, and such persons that may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the Private Attorney General Act,
18 brings this Representative Action on behalf of the State of California with respect to himself and all
19 individuals who are or previously were employed by DEFENDANT, in California, including any
20 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees
21 ("AGGRIEVED EMPLOYEES") during the time period of October 22, 2023 until a date as
22 determined by the Court (the "PAGA PERIOD").

23 119. On October 22, 2024, PLAINTIFF gave written notice by electronic mail to the
24 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer
25 of the specific provisions of this code alleged to have been violated as required by Labor Code §
26 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
27 herein (PAGA Notice only without draft complaint). The statutory waiting period for PLAINTIFF
28 to add these allegations to the Complaint has expired. As a result, pursuant to

1 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
2 pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined.

4 120. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and
7 provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay
8 overtime wages and sick pay wages, (e) failed to reimburse employees for required expenses, (f)
9 failed to provide wages when due, and (g) failed to provide suitable seating, all in violation of the
10 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a),
11 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100, 2802, California Code
12 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title
13 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby
14 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only
15 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
16 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
17 AGGRIEVED EMPLOYEES.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
21 as follows:

22 1. On behalf of the CALIFORNIA CLASS:

23 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS
24 as a class action pursuant to Cal. Code of Civ. Proc. § 382;

25
26
27

¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

- 1 B) An order temporarily, preliminarily and permanently enjoining and restraining
2 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
3 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
4 from compensation due to PLAINTIFF and the other members of the CALIFORNIA
5 CLASS; and,
6 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
7 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and
8 to the other members of the CALIFORNIA CLASS.

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

- 10 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth
11 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
12 pursuant to Cal. Code of Civ. Proc. § 382;
13 B) Compensatory damages, according to proof at trial, including compensatory damages
14 for minimum and overtime compensation due PLAINTIFF and the other members of
15 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
16 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
17 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
18 which a violation occurs and one hundred dollars (\$100) per each member of the
19 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not
20 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs
21 for violation of Cal. Lab. Code § 226;
22 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
23 applicable IWC Wage Order;
24 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
25 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
26 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs
27 of suit.; and,
28

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

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

5 A) Recovery of civil penalties and prescribed by the Labor Code Private Attorneys General
6 Act of 2004; and

7 B) An award of attorneys' fees and cost of suit, as allowable under the law, but not limited
8 to, pursuant to Labor Code §2699;

9 4. On all claims:

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

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

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

14
15
16 Dated: July 15, 2026

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

17
18 By: /s/ Nicholas J. De Blouw
19 Norman B. Blumenthal
Nicholas J. De Blouw

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DEMAND FOR A JURY TRIAL

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

Dated: July 15, 2026

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw

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EXHIBIT - 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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1004

October 22, 2024
CA3446

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Briotix Health, Limited Partnership
Certified Mail #9589071052701502087626
CSC - LAWYERS INCORPORATING
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150N
SACRAMENTO, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 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 Briotix Health, Limited Partnership in California, including any employees staffed with Briotix Health, Limited Partnership by a third party, and classified as non-exempt employees during the time period of October 22, 2023 until a date as determined by the Court. Our offices represent Plaintiff Anthony Sandoval (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Briotix Health, Limited Partnership (“Defendant”). Plaintiff was employed by Defendant in California from February of 2023 to September of 2024. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted

in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(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.