

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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

Christine T. LeVu (State Bar #288271)

4 christine@bamlawca.com

Brooke Wilkinson Waldro (State Bar #314486)

5 Adolfo Sanchez Contreras (State Bar #354371)

2255 Calle Clara

6 La Jolla, CA 92037

Telephone: (858)551-1223

7 Facsimile: (858) 551-1232

Website: www.bamlawca.com

8 *Attorneys for Plaintiff*

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County of Tulare
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

12
13 ROBERT BERRY, an individual, on behalf of
himself and on behalf of all persons similarly
14 situated, and on behalf of the State of
California, as a private attorney general,

15
16 Plaintiff,

17 vs.

18 WILDFIRE DEFENSE SYSTEMS, INC., a
19 Corporation; and DOES 1 through 50,
inclusive,

20
21 Defendants.

Case No. VCU315054

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;

7. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PAY SICK PAY WAGES IN
VIOLATION OF CAL. LAB CODE §§201-
203, 233, 246; and,
9. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698, et seq.]

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Wildfire Defense Systems, Inc. (“DEFENDANT”) is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in California.

2. DEFENDANT provides services to insurance clients at a wildfire agency-level scale,

3. PLAINTIFF is currently employed by DEFENDANT in California. PLAINTIFF’S employment with DEFENDANT started in August of 2021. PLAINTIFF has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all individuals who are or previously were employed by Defendant Wildfire Defense Systems, Inc. (“Defendant”) who were classified as nonexempt in the State of California (the “CALIFORNIA CLASS”) from November 13, 2020 to the earlier of preliminary approval or August

1 13, 2025 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate
2 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

5 6 THE CONDUCT

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

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

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

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

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

1 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
2 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
3 premises during their rest period.

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

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

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

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

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

21 17. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
22 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely
23 earned non-discretionary incentive wages which increased their regular rate of pay.
24 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
25 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
26 as required under Cal. Lab. Code Section 246.
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1 18. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
2 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
3 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
4 informed and believes and based thereon alleges that such failure to pay sick pay at regular
5 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
6 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
7 Sections 201-203.

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

18 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
19 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
20 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct
21 consequence of discharging their duties on behalf of DEFENDANT. Under California
22 Labor Code Section 2802, employers are required to indemnify employees for all expenses
23 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
24 states that "an employer shall indemnify his or her employee for all necessary expenditures
25 or losses incurred by the employee in direct consequence of the discharge of his or her
26 duties, or of his or her obedience to the directions of the employer, even though unlawful,
27 unless the employee, at the time of obeying the directions, believed them to be unlawful."
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21. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS Members as a business expense, were required by DEFENDANT to use their own personal cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular phones. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

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

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

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

1 28. DEFENDANT has the legal burden to establish that each and every
2 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
3 required by California laws. The DEFENDANT, however, as a matter of policy and
4 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
5 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
6 Member is paid as required by law. This common business practice is applicable to each
7 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
8 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, (the
9 “UCL”) as causation, damages, and reliance are not elements of this claim.

10 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
11 CLASS Members is impracticable.

12 30. DEFENDANT violated the rights of the CALIFORNIA CLASS under
13 California law by:

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

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

- 26 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
27 that the joinder of all such persons is impracticable and the disposition
28 of their claims as a class will benefit the parties and the Court;

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
2 issues that are raised in this Complaint are common to the
3 CALIFORNIA CLASS will apply to every member of the
4 CALIFORNIA CLASS;
- 5 (c) The claims of the representative PLAINTIFF are typical of the claims
6 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
7 the other members of the CALIFORNIA CLASS, was classified as a
8 non-exempt employee paid on an hourly basis who was subjected to the
9 DEFENDANT's deceptive practice and policy which failed to provide
10 the legally required meal and rest periods to the CALIFORNIA CLASS
11 and thereby underpaid compensation to PLAINTIFF and
12 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
13 result of DEFENDANT's employment practices. PLAINTIFF and the
14 members of the CALIFORNIA CLASS were and are similarly or
15 identically harmed by the same unlawful, deceptive and unfair
16 misconduct engaged in by DEFENDANT; and,
- 17 (d) The representative PLAINTIFF will fairly and adequately represent and
18 protect the interest of the CALIFORNIA CLASS, and has retained
19 counsel who are competent and experienced in Class Action litigation.
20 There are no material conflicts between the claims of the representative
21 PLAINTIFF and the members of the CALIFORNIA CLASS that would
22 make class certification inappropriate. Counsel for the CALIFORNIA
23 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
24 Members.

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

- 27 (a) Without class certification and determination of declaratory, injunctive,
28 statutory and other legal questions within the class format, prosecution

1 of separate actions by individual members of the CALIFORNIA
2 CLASS will create the risk of:

3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA CLASS which would establish
5 incompatible standards of conduct for the parties opposing the
6 CALIFORNIA CLASS; and/or,

7 2) Adjudication with respect to individual members of the
8 CALIFORNIA CLASS which would as a practical matter be
9 dispositive of interests of the other members not party to the
10 adjudication or substantially impair or impede their ability to
11 protect their interests.

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

17 1) With respect to the First Cause of Action, the final relief on
18 behalf of the CALIFORNIA CLASS sought does not relate
19 exclusively to restitution because through this claim
20 PLAINTIFF seeks declaratory relief holding that the
21 DEFENDANT's policy and practices constitute unfair
22 competition, along with declaratory relief, injunctive relief, and
23 incidental equitable relief as may be necessary to prevent and
24 remedy the conduct declared to constitute unfair competition;

25 (c) Common questions of law and fact exist as to the members of the
26 CALIFORNIA CLASS, with respect to the practices and violations of
27 California law as listed above, and predominate over any question
28 affecting only individual CALIFORNIA CLASS Members, and a Class

1 Action is superior to other available methods for the fair and efficient
2 adjudication of the controversy, including consideration of:

- 3 1) The interests of the members of the CALIFORNIA CLASS in
4 individually controlling the prosecution or defense of separate
5 actions in that the substantial expense of individual actions will
6 be avoided to recover the relatively small amount of economic
7 losses sustained by the individual CALIFORNIA CLASS
8 Members when compared to the substantial expense and burden
9 of individual prosecution of this litigation;
- 10 2) Class certification will obviate the need for unduly duplicative
11 litigation that would create the risk of:
- 12 A. Inconsistent or varying adjudications with respect to
13 individual members of the CALIFORNIA CLASS, which
14 would establish incompatible standards of conduct for the
15 DEFENDANT; and/or,
- 16 B. Adjudications with respect to individual members of the
17 CALIFORNIA CLASS would as a practical matter be
18 dispositive of the interests of the other members not
19 parties to the adjudication or substantially impair or
20 impede their ability to protect their interests;
- 21 3) In the context of wage litigation because a substantial number of
22 individual CALIFORNIA CLASS Members will avoid asserting
23 their legal rights out of fear of retaliation by DEFENDANT,
24 which may adversely affect an individual's job with
25 DEFENDANT or with a subsequent employer, the Class Action
26 is the only means to assert their claims through a representative;
27 and,
28

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

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

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

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

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

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

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

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

21
22 **THE CALIFORNIA LABOR SUB-CLASS**

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

1 date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”)
2 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate
3 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
4 (\$5,000,000.00).

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

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

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

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

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

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

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

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

- 13 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
14 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
15 CLASS all wages due for overtime worked, for which DEFENDANT is
16 liable pursuant to Cal. Lab. Code § 1194;
- 17 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1, by failing to
18 accurately pay PLAINTIFF and the members of the CALIFORNIA
19 LABOR SUB-CLASS the correct minimum wage pay for which
20 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 21 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
22 the members of the CALIFORNIA LABOR SUB-CLASS with an
23 accurate itemized statement in writing showing the corresponding
24 correct amount of wages earned by the employee;
- 25 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
26 PLAINTIFF and the other members of the CALIFORNIA LABOR
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- 1 SUB-CLASS with all legally required off-duty, uninterrupted thirty
2 (30) minute meal breaks and the legally required off-duty rest breaks;
- 3 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
4 when an employee is discharged or quits from employment, the
5 employer must pay the employee all wages due without abatement, by
6 failing to tender full payment and/or restitution of wages owed or in the
7 manner required by California law to the members of the
8 CALIFORNIA LABOR SUB-CLASS who have terminated their
9 employment; and,
- 10 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
11 and the CALIFORNIA LABOR SUB-CLASS members with necessary
12 expenses incurred in the discharge of their job duties.

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

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

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

16 42. In addition to meeting the statutory prerequisites to a Class Action, this action
17 is 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
20 of separate actions by individual members of the CALIFORNIA
21 LABOR SUB-CLASS will create the risk of:
- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA LABOR SUB-CLASS which
24 would establish incompatible standards of conduct for the
25 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 26 2) Adjudication with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS which would as a
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1 practical matter be dispositive of interests of the other members
2 not party to the adjudication or substantially impair or impede
3 their ability to protect their interests.

4 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
5 acted or refused to act on grounds generally applicable to the
6 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
7 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
8 whole in that DEFENDANT fails to pay all wages due. Including the
9 correct wages for all time worked by the members of the
10 CALIFORNIA LABOR SUB-CLASS as required by law;

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

- 18 1) The interests of the members of the CALIFORNIA LABOR
19 SUB-CLASS in individually controlling the prosecution or
20 defense of separate actions in that the substantial expense of
21 individual actions will be avoided to recover the relatively small
22 amount of economic losses sustained by the individual
23 CALIFORNIA LABOR SUB-CLASS Members when compared
24 to the substantial expense and burden of individual prosecution
25 of this litigation;
- 26 2) Class certification will obviate the need for unduly duplicative
27 litigation that would create the risk of:
28

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

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

- 25 (a) The questions of law and fact common to the CALIFORNIA LABOR
26 SUB-CLASS predominate over any question affecting only individual
27 CALIFORNIA LABOR SUB-CLASS Members;
28

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

9 **FIRST CAUSE OF ACTION**

10 **For Unlawful Business Practices**

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

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

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

23 55. All the acts described herein as violations of, among other things, the
24 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
25 California Labor Code, were unlawful and in violation of public policy, were immoral,
26 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
27 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200.
28

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

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

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

17
18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Minimum Wages**

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

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

22 **and Against All Defendants)**

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

26 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
28

1 California Labor Code and the Industrial Welfare Commission requirements for
2 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and
3 CALIFORNIA CLASS Members.

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

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

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

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

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

26 66. As a direct result of DEFENDANT's unlawful wage practices as alleged
27 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
28

1 not receive the correct minimum wage compensation for their time worked for
2 DEFENDANT.

3 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
4 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
5 Members to work without paying them for all the time they were under DEFENDANT's
6 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
8 that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

15
16 **THIRD CAUSE OF ACTION**

17 **For Failure To Pay Overtime Compensation**

18 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

16 77. DEFENDANT's unlawful wage and hour practices manifested, without
17 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
18 implementing a policy and practice that failed to accurately record overtime worked by
19 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
20 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
21 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
22 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
23 workweek.

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

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

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

17 81. DEFENDANT failed to accurately pay the PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
19 worked which was in excess of the maximum hours permissible by law as required by Cal.
20 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
22 as to which DEFENDANT failed to accurately record and pay as evidenced by
23 DEFENDANT's business records and witnessed by employees.

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

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

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

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

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

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

3
4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

12 87. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
13 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
14 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
15 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
16 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
17 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
18 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
19 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
20 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
21 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
22 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
23 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
24 second off-duty meal period in some workdays in which these employees were required by
25 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
26 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
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28

1 breaks without additional compensation and in accordance with DEFENDANT's strict
2 corporate policy and practice.

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

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

12 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
28

1 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
3 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

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

- 23 (1) gross wages earned,
24 (2) total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare Commission,
28 (3) the number of piece-rate units earned and any applicable piece rate if the employee
is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,
(5) net wages earned,

(6) the inclusive dates of the period for which the employee is paid,
(7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

97. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs

1 expended calculating the correct wages for all missed meal and rest breaks and the amount
2 of employment taxes which were not properly paid to state and federal tax authorities.
3 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
4 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
5 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
6 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
7 226, in an amount according to proof at the time of trial (but in no event more than four
8 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
9 CALIFORNIA LABOR SUB-CLASS herein).

10 11 **SEVENTH CAUSE OF ACTION**

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

13 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

18 **EIGHTH CAUSE OF ACTION**

19 **For Failure to Pay Sick Pay Wages**

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

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

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

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

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

25 105. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick
26 leave, vested sick pay wages are due and to be paid no later than the payday for the next
27 regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab.
28

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

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

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

4
5 **NINTH CAUSE OF ACTION**

6 **For Violation of the Private Attorneys General Act**

7 **[Cal. Lab. Code §§ 2698, *et seq.*]**

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

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

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

21 110. PLAINTIFF, and such persons that may be added from time to time who
22 satisfy the requirements and exhaust the administrative procedures under the Private
23 Attorney General Act, brings this Representative Action on behalf of the State of California
24 with respect to himself and all individuals who worked for Defendant in the State of California
25 and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the period
26 August 21, 2023 to the earlier of preliminary approval or August 13, 2025 (the "PAGA
27 PERIOD").
28

1 111. On August 21, 2024, PLAINTIFF gave written notice by electronic mail to the
2 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
3 employer of the specific provisions of this code alleged to have been violated as required by
4 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
5 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
6 now commence a representative civil action under PAGA pursuant to Section 2699 as the
7 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
8 defined.

9 112. The policies, acts and practices heretofore described were and are an unlawful
10 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
11 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
12 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
13 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
14 required expenses, and (f) failed to provide wages when due, all in violation of the
15 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204, 210, 218, 221,
16 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100, 2802,
17 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
18 Code of Regulations, Title 8, Section 11070(14), and the applicable Wage Order(s), and
19 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
20 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
21 General Act of 2004 as the representative of the State of California for the illegal conduct
22 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

23 113. All of the conduct and violations alleged herein occurred during the PAGA
24 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
25 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
26

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

1 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
2 2018 AJDAR 12157 (Certified for Publication 12/19/18).

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
2 in which a violation occurs and one hundred dollars (\$100) per each member of
3 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
5 an award of costs for violation of Cal. Lab. Code § 226;
- 6 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
7 the applicable IWC Wage Order;
- 8 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
9 1197;
- 10 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
11 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
12 costs of suit.; and,
- 13 G) The wages of all terminated employees in the CALIFORNIA LABOR
14 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
15 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

18 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
19 General Act of 2004.

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- 1 4. On all claims:
- 2 A) An award of interest, including prejudgment interest at the legal rate;
- 3 B) Such other and further relief as the Court deems just and equitable; and,
- 4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 5 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
- 6 and/or §2802.
- 7

8 Dated: October 9, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

10 By: /s/Nicholas J. De. Blouw

11 Norman B. Blumenthal

12 Nicholas J. De Blouw

13 *Attorneys for Plaintiff*

14 **DEMAND FOR A JURY TRIAL**

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

16

17 Dated: October 9, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

19 By: /s/Nicholas J. De. Blouw

20 Norman B. Blumenthal

21 Nicholas J. De Blouw

22 *Attorneys for Plaintiff*

23

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STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Christine T. LeVu, am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On October 9, 2025, I served the document(s) described as:

1. FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

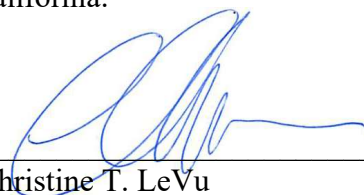
X **(BY ELECTRONIC SERVICE):** I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

Michael D. Thomas
Michael.Thomas@jacksonlewis.com
Jordan Wysocki
Jordan.Wysocki@jacksonlewis.com
Annalyse Butler
Annalyse.Butler@jacksonlewis.com
JACKSON LEWIS P.C.
200 Spectrum Center Dr.
Suite 500
Orange County, CA 92618
Telephone: 949-885-1360
Fax: 949-885-1380

Attorneys for *Defendant*

X **(State):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 9, 2025, at San Diego, California.


Christine T. LeVu