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December 5, 2024
CA3343

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Giant Interactive LLC
Certified Mail #9589071052701502088173
Peter D Lepiscopo Esq.
23 CORPORATE PLAZA DRIVE
SUITE 150
NEWPORT BEACH, CA 92660

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

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

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

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

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

Respectfully,

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

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December 5, 2024
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VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Testronic, Inc.
Online Filing Certified Mail #9589071052701502088180
ERICK LERMA
250 EAST OLIVE AVE., SUITE 300
BURBANK, CA 91502

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.

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

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

Respectfully,

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

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DAVID ETEDGUI, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

TESTRONIC, INC., a corporation; GIANT
INTERACTIVE LLC, a limited liability
company; and DOES 1 through 50, inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; and,
9. DISCRIMINATION AND RETALIATION VIOLATION OF FEHA.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

8 2. Giant Interactive LLC (“DEFENDANT”) is a corporation that at all relevant times
9 mentioned herein conducted and continues to conduct substantial business in California.

10 3. Testronic, Inc. and Giant Interactive LLC are the joint employers of PLAINTIFF
11 as evidenced by paycheck and by the company PLAINTIFF performed work for respectively,
12 and are therefore jointly responsible as employers for the conduct alleged herein, and are
13 therefore collectively referred to herein as (“DEFENDANT”).

14 4. DEFENDANT provides quality assurance and localization services for
15 entertainment industries, including games, film, and television in California.

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

21 6. PLAINTIFF brings this Class Action on behalf of himself and a California class,
22 defined as all individuals who are or previously were employed by Testronic, Inc. and/or Giant
23 Interactive LLC in California, including any employees staffed with Testronic, Inc. and/or
24 Giant Interactive LLC by a third party, and classified as non-exempt employees (the
25 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
26 filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA
27 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
28 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

1
2 **THE CONDUCT**

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

27 11. State and federal law provides that employees must be paid overtime and meal
28 and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF

1 and other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive
2 pay that is tied to specific elements of an employee's performance.

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

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

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

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

24 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
25 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
26 actual amount of time these employees worked. Pursuant to the Industrial Welfare
27 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
28 CALIFORNIA CLASS Members for all time worked, meaning the time during which an

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

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

1 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
2 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
3 § 226.

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

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

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

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

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

26 21. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
27 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely
28 earned non-discretionary incentive wages which increased their regular rate of pay.

1 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
2 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of
3 pay, as required under Cal. Lab. Code Section 246.

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

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

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

1 duties, or of his or her obedience to the directions of the employer, even though unlawful,
2 unless the employee, at the time of obeying the directions, believed them to be unlawful."

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

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

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

25 28. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
26 Employees, DEFENDANT violated California Labor Code Section 1198 and California
27 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
28 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on

1 behalf of PLAINTIFF and other Aggrieved Employees as provided herein. Providing
2 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
3 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
4 Code and regulations promulgated thereunder as herein alleged.

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

16 **JURISDICTION AND VENUE**

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

21 31. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
23 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
24 facilities in this County and/or conducts substantial business in this County, and (ii)
25 committed the wrongful conduct herein alleged in this County against members of the
26 CALIFORNIA CLASS.
27
28

THE CALIFORNIA CLASS

32. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (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 Testronic, Inc. and/or Giant Interactive LLC in California, including any employees staffed with Testronic, Inc. and/or Giant Interactive LLC 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).

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

34. 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.

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

1 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
2 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
3 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

4 36. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
5 CLASS Members is impracticable.

6 37. DEFENDANT violated the rights of the CALIFORNIA CLASS under
7 California law by:

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

18 38. This Class Action meets the statutory prerequisites for the maintenance of a
19 Class 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
21 that the joinder of all such persons is impracticable and the disposition
22 of their claims as a class will benefit the parties and the Court;
23 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
24 issues that are raised in this Complaint are common to the
25 CALIFORNIA CLASS will apply to every member of the
26 CALIFORNIA CLASS;
27 (c) The claims of the representative PLAINTIFF are typical of the claims
28 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all

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

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

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

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

- 25 1) Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA CLASS which would establish
27 incompatible standards of conduct for the parties opposing the
28 CALIFORNIA CLASS; and/or,

1 2) Adjudication with respect to individual members of the
2 CALIFORNIA CLASS which would as a practical matter be
3 dispositive of interests of the other members not party to the
4 adjudication or substantially impair or impede their ability to
5 protect their interests.

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

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

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

25 1) The interests of the members of the CALIFORNIA CLASS in
26 individually controlling the prosecution or defense of separate
27 actions in that the substantial expense of individual actions will
28 be avoided to recover the relatively small amount of economic

1 losses sustained by the individual CALIFORNIA CLASS
2 Members when compared to the substantial expense and burden
3 of individual prosecution of this litigation;
4 2) Class certification will obviate the need for unduly duplicative
5 litigation that would create the risk of:
6 A. Inconsistent or varying adjudications with respect to
7 individual members of the CALIFORNIA CLASS, which
8 would establish incompatible standards of conduct for the
9 DEFENDANT; and/or,
10 B. Adjudications with respect to individual members of the
11 CALIFORNIA CLASS would as a practical matter be
12 dispositive of the interests of the other members not
13 parties to the adjudication or substantially impair or
14 impede their ability to protect their interests;
15 3) In the context of wage litigation because a substantial number of
16 individual CALIFORNIA CLASS Members will avoid asserting
17 their legal rights out of fear of retaliation by DEFENDANT,
18 which may adversely affect an individual's job with
19 DEFENDANT or with a subsequent employer, the Class Action
20 is the only means to assert their claims through a representative;
21 and,
22 4) A class action is superior to other available methods for the fair
23 and efficient adjudication of this litigation because class
24 treatment will obviate the need for unduly and unnecessary
25 duplicative litigation that is likely to result in the absence of
26 certification of this action pursuant to Cal. Code of Civ. Proc. §
27 382.
28

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

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

1 wide relief appropriate with respect to the CALIFORNIA CLASS as a
2 whole;

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

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

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

14
15 **THE CALIFORNIA LABOR SUB-CLASS**

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

26 43. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
27 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
28 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT

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

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

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

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

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

- 1 (d) The proper measure of damages and penalties owed to the members of
2 the CALIFORNIA LABOR SUB-CLASS; and,
3 (e) Whether DEFENDANT's conduct was willful.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA LABOR SUB-CLASS Members will

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

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

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

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

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

25
26 **FIRST CAUSE OF ACTION**

27 **For Unlawful Business Practices**

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

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

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

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

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

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

19 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

23 59. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
24 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
25 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
26 pay for each workday in which a second off-duty meal period was not timely provided for
27 each ten (10) hours of work.
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1 60. PLAINTIFF further demands on behalf of himself and each member of the
2 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
3 duty paid rest period was not timely provided as required by law.

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

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

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

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

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

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

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11 **SECOND CAUSE OF ACTION**

12 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

3 76. 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-
5 CLASS for the true time they worked, PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
7 injury in amounts which are presently unknown to them and which will be ascertained
8 according to proof at trial.

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

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

24 79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
26 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
27 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
28 extent minimum wage compensation is determined to be owed to the CALIFORNIA

1 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
2 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
3 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
4 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
5 conduct as alleged herein was willful, intentional and not in good faith. Further,
6 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
7 and recover statutory costs.

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12 **THIRD CAUSE OF ACTION**

13 **For Failure To Pay Overtime Compensation**

14 **[Cal. Lab. Code § 510]**

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

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

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

26 82. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
27 public policy, an employer must timely pay its employees for all hours worked.
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1 83. Cal. Lab. Code § 510 further provides that employees in California shall not
2 be employed more than eight (8) hours per workday and more than forty (40) hours per
3 workweek unless they receive additional compensation beyond their regular wages in
4 amounts specified by law.

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

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

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

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

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

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

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

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

27 92. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all

1 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
3 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

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27 **FOURTH CAUSE OF ACTION**

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

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

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FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

100. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
2 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

3 101. DEFENDANT further violated 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 rest 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 rest period was not provided.

8 102. 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 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

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

17 103. 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.

20 104. Cal. Labor Code § 226 provides that an employer must furnish employees
21 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,

1 (7) the name of the employee and his or her social security number, except that by
2 January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown on
4 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.

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

25 106. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
26 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
28 expended calculating the correct wages for all missed meal and rest breaks and the amount

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

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14 **SEVENTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 2802]**

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

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

22 108. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

28 109. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-

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

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

21 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION

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

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

(By PLAINTIFF Against All Defendants)

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

118. In or around September 2023, PLAINTIFF noticed his coworkers, outside of his protected basis, were being paid more and given more employment opportunities than he was. In or around November 2023, PLAINTIFF complained to HR, but nothing was done about it. In or around November 2023 or December 2023, PLAINTIFF was subjected to harassment due to his national origin (PLAINTIFF is Israeli and Jewish) by Casey Rubio, Director of Technical Operations. From in or around December 2023 to July 2024, PLAINTIFF complained to HR about this disparate treatment multiple times. Yet, nothing was done to address the ongoing harassment. Instead, as a result of PLAINTIFF's good faith complaints, DEFENDANT denied PLAINTIFF employment opportunities, privileges, and wages under the Labor Code and PLAINTIFF was plagued with ongoing work pressures, obligations, and mistreatment by his supervisors as a result of PLAINTIFF's willingness to raise formal complaints described herein. Furthermore, the continuous stress and discrimination at work caused PLAINTIFF to feel afraid of going into work each day. Prior to filing this action PLAINTIFF exhausted his administrative remedies by filing a timely

1 administrative complaint with the Department of Fair Employment and Housing (“DFEH”)
2 and received a DFEH Right to Sue letter on December 4, 2024.

3 125. DEFENDANT’s conduct, as alleged, violated FEHA, Government Code
4 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
5 including the following bases for liability:

6 a. Taking adverse employment actions against PLAINTIFF, including
7 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
8 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
9 PLAINTIFF’s national origin and religion in violation of Government Code Section
10 12940(a);

11 b. Harassing PLAINTIFF and/or creating a hostile work environment, in
12 whole or in part on the basis of PLAINTIFF’s national origin and religion;

13 c. Failing to take all reasonable steps to prevent discrimination and
14 harassment based on national origin and religion in violation of Government Code section
15 12940(k);

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

20 126. As a proximate result of DEFENDANT’s willful, knowing, and intentional
21 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
22 substantial losses of earnings and other employment benefits.

23 127. As a proximate result of DEFENDANT’s willful, knowing, and intentional
24 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
25 humiliation, emotional distress, and physical and mental pain and anguish, all to
26 PLAINTIFF’s damage in a sum according to proof.

27 128. PLAINTIFF has incurred and continues to incur legal expenses and attorneys’
28 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover

1 reasonable attorneys' fees and costs (including expert costs) in an amount according to
2 proof.

3 129. DEFENDANT's misconduct was committed intentionally, in a malicious,
4 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
5 against DEFENDANT.
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
17 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
18 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum and overtime compensation due PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
22 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
23 statutory rate;
24 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
25 in which a violation occurs and one hundred dollars (\$100) per each member of
26 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
27 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
28 an award of costs for violation of Cal. Lab. Code § 226;

- 1 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
4 1197;
- 5 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
6 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
7 costs of suit.; and,
- 8 G) The wages of all terminated employees in the CALIFORNIA LABOR
9 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
10 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 11 3. On behalf of the Ninth Cause of Action:
- 12 A) For all special damages which were sustained as a result of DEFENDANT's
13 conduct, including, but not limited to, back pay, front pay, lost compensation and
14 job benefits that PLAINTIFF would have received but for the retaliatory practices
15 of DEFENDANT; and,
- 16 B) For all exemplary damages, according to proof, which were sustained as a result
17 of DEFENDANT's conduct.
- 18 4. On all claims:
- 19 A) An award of interest, including prejudgment interest at the legal rate;
- 20 B) Such other and further relief as the Court deems just and equitable; and,
- 21 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
22 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
23 and/or §2802.
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Dated: December 4, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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DEMAND FOR A JURY TRIAL

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

Dated: December 4, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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