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ELECTRONICALLY FILED

Superior Court of California

County of Sacramento

12/03/2024

By: A. Turner Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

BRANDON GOSSETT and MICHAEL
CHANEY, individuals, on behalf of
themselves and all other persons similarly
situated,

Plaintiffs,

vs.

BROADBASE, INC., a corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 24CV012611

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-203, 233, 246;
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, et seq.]; and
11. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.

DEMAND FOR A JURY TRIAL

Brandon Gossett and Michael Chaney (“PLAINTIFFS”), individuals, on behalf of themselves and on behalf of all other similarly situated current and former employees allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following.

THE PARTIES

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

2. DEFENDANT owns and operates automotive oil change specialty shops in California.

3. Plaintiff Gossett was employed by DEFENDANT in California from January 24, 2022 to June 20, 2023. Plaintiff Gossett was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. Plaintiff Chaney was employed by DEFENDANT in California from March 2022 to September 2023. Plaintiff Chaney was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

5. PLAINTIFFS bring this Class Action on behalf of themselves and a California class, defined as all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning June 24, 2020, 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).

6. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and

1 practice which failed to lawfully compensate these employees. DEFENDANT's policy and
2 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
3 DEFENDANT retained and continues to retain wages due to PLAINTIFFS and the other
4 members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
6 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS
7 who have been economically injured by DEFENDANT's past and current unlawful conduct, and
8 all other appropriate legal and equitable relief.

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

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

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THE CONDUCT

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

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

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 11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
4 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
5 PLAINTIFFS 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 rate
9 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and other
10 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 PLAINTIFFS 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 PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANT.

18 12. As a result of their rigorous work schedules, PLAINTIFFS and other
19 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
20 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS
21 and other CALIFORNIA CLASS Members were required from time to time to perform work
22 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 PLAINTIFFS 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 times
27 to avoid paying penalties to PLAINTIFFS and other CALIFORNIA CLASS Members.
28 PLAINTIFFS 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 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS 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 time,
9 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
10 ten (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS
11 Members were also not provided with one hour wages in lieu thereof. Additionally, the
12 applicable California Wage Order requires employers to provide employees with off-duty rest
13 periods, which the California Supreme Court defined as time during which an employee is
14 relieved from all work related duties and free from employer control. In so doing, the Court
15 held that the requirement under California law that employers authorize and permit all
16 employees to take rest period means that employers must relieve employees of all duties and
17 relinquish control over how employees spend their time which includes control over the
18 locations where employees may take their rest period. Employers cannot impose controls that
19 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
20 DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA CLASS Members
21 from unconstrained walks and is unlawful based on DEFENDANT's rule which states
22 PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the work premises
23 during their rest period.

24 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
25 accurately record and pay PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
6 result, PLAINTIFFS 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 15. From time to time, DEFENDANT also failed to provide PLAINTIFFS 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. PLAINTIFFS 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 PLAINTIFFS 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 the
25 hours shown on the wage statements were added up, they did not equal the actual total hours
26 worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the
27 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an
28 itemized wage statement that lists all the requirements under California Labor Code 226. As a

1 result, DEFENDANT from time to time provided PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

3 16. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
4 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
5 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
6 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
7 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS
8 Members at their base rates of pay.

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

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

19 19. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS
20 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
21 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS ARE
22 informed and believes and based thereon alleges that such failure to pay sick pay at regular
23 rate was willful, such that PLAINTIFFS and members of the CALIFORNIA CLASS whose
24 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
25 Sections 201-203.

26 20. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
27 to collect or receive from an employee any part of wages theretofore paid by said employer to
28 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and

1 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
2 compensation payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members,
3 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFFS
4 and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these
5 employees all wages due at each applicable pay period and upon termination. PLAINTIFFS
6 and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
7 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

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

18 22. In the course of their employment PLAINTIFFS and other CALIFORNIA
19 CLASS Members as a business expense, were required by DEFENDANT to use their own
20 personal cellular phones as a result of and in furtherance of their job duties as employees for
21 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
22 associated with the use of their personal cellular phones for DEFENDANT's benefit.
23 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
24 DEFENDANT to use their personal cellular phones. As a result, in the course of their
25 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
26 CLASS incurred unreimbursed business expenses which included, but were not limited to,
27 costs related to the use of their personal cellular phones all on behalf of and for the benefit of
28 DEFENDANT.

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

JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

26. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200 (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,

1 defined as all individuals who are or previously were employed by DEFENDANT in
2 California, including any employees staffed with DEFENDANT by a third party, and
3 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
4 period beginning June 24, 2020, and ending on the date as determined by the Court (the
5 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
6 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

26 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.
28

1 31. DEFENDANT violated the rights of the CALIFORNIA CLASS under
2 California law by:

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

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

- 15 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
16 that the joinder of all such persons is impracticable and the disposition
17 of their claims as a class will benefit the parties and the Court;
18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
19 issues that are raised in this Complaint are common to the
20 CALIFORNIA CLASS will apply to every member of the
21 CALIFORNIA CLASS;
22 (c) The claims of the representative PLAINTIFFS are typical of the claims
23 of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all
24 the other members of the CALIFORNIA CLASS, was classified as a
25 non-exempt employee paid on an hourly basis who was subjected to the
26 DEFENDANT's deceptive practice and policy which failed to provide
27 the legally required meal and rest periods to the CALIFORNIA CLASS
28 and thereby underpaid compensation to PLAINTIFFS and

1 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
2 result of DEFENDANT's employment practices. PLAINTIFFS and the
3 members of the CALIFORNIA CLASS were and are similarly or
4 identically harmed by the same unlawful, deceptive and unfair
5 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

1 A. Inconsistent or varying adjudications with respect to
2 individual members of the CALIFORNIA CLASS, which
3 would establish incompatible standards of conduct for the
4 DEFENDANT; and/or,

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

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

17 4) A class action is superior to other available methods for the fair
18 and efficient adjudication of this litigation because class
19 treatment will obviate the need for unduly and unnecessary
20 duplicative litigation that is likely to result in the absence of
21 certification of this action pursuant to Cal. Code of Civ. Proc. §
22 382.

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

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

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

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

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

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

10 36. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
11 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
12 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
13 California, including any employees staffed with DEFENDANT by a third party, and
14 classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
15 time during the period beginning June 24, 2021, and ending on the date as determined by the
16 Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ.
17 Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
18 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

- 27 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
28 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-

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

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

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

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

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

- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,
- (d) The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

1 treatment will obviate the need for unduly and unnecessary
2 duplicative litigation that is likely to result in the absence of
3 certification of this action pursuant to Cal. Code of Civ. Proc. §
4 382.

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

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

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

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

21 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

22 45. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
23 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

25 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
26 Code § 17021.

27 47. California Business & Professions Code §§ 17200, (the “UCL”) defines unfair
28 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203

1 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

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

11 Cal. Bus. & Prof. Code § 17203.

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

20 49. By the conduct alleged herein, DEFENDANT's practices were unlawful and
21 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
22 unscrupulous or substantially injurious to employees, and were without valid justification or
23 utility for which this Court should issue equitable and injunctive relief pursuant to Section
24 17203 of the California Business & Professions Code, including restitution of wages
25 wrongfully withheld.

26 50. By the conduct alleged herein, DEFENDANT's practices were deceptive and
27 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
28 meal and rest periods, the required amount of compensation for missed meal and rest periods
and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
all necessary business expenses incurred, and failed to provide Fair Labor Standards Act
overtime wages due for overtime worked as a result of failing to include non-discretionary

1 incentive compensation into their regular rates of pay for purposes of computing the proper
2 overtime pay due to a business practice that cannot be justified, pursuant to the applicable
3 Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus.
4 Code §§ 17200, and for which this Court should issue injunctive and equitable relief,
5 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
6 withheld.

7 51. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
8 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
9 the other members of the CALIFORNIA CLASS to be underpaid during their employment
10 with DEFENDANT.

11 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
12 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
13 provide all legally required meal breaks to PLAINTIFFS and the other members of the
14 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

15 53. Therefore, PLAINTIFFS demands on behalf of themselves and on behalf of
16 each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-
17 duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
18 hour of pay for each workday in which a second off-duty meal period was not timely
19 provided for each ten (10) hours of work.

20 54. PLAINTIFFS further demand on behalf of themselves and each member of the
21 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
22 duty paid rest period was not timely provided as required by law.

23 55. By and through the unlawful and unfair business practices described herein,
24 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and
25 the other members of the CALIFORNIA CLASS, including earned wages for all time
26 worked, and has deprived them of valuable rights and benefits guaranteed by law and
27 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
28 allow DEFENDANT to unfairly compete against competitors who comply with the law.

1 56. All the acts described herein as violations of, among other things, the Industrial
2 Welfare Commission Wage Orders, the California Code of Regulations, and the California
3 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
4 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
5 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200.

6 57. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
7 to, and do, seek such relief as may be necessary to restore to them the money and property
8 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
9 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
10 unfair business practices, including earned but unpaid wages for all time worked.

11 58. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
12 entitled to, and do, seek a declaration that the described business practices are unlawful,
13 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT
14 from engaging in any unlawful and unfair business practices in the future.

15 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no
16 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
17 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
18 unabated. As a result of the unlawful and unfair business practices described herein,
19 PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will
20 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
21 from continuing to engage in these unlawful and unfair business practices.

22
23 **SECOND CAUSE OF ACTION**

24 **For Failure To Pay Minimum Wages**

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

26 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

27 **and Against All Defendants)**

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

4 61. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
5 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
6 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
7 to accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS
8 Members.

9 62. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
10 commission is the minimum wage to be paid to employees, and the payment of a less wage
11 than the minimum so fixed is unlawful.

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

15 64. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the
16 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
17 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
18 unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
19 other members of the CALIFORNIA LABOR SUB-CLASS.

20 65. DEFENDANT's unlawful wage and hour practices manifested, without
21 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
22 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and
23 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
24 pay.

25 66. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately calculated the correct time worked and consequently underpaid the actual time
27 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
28 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other

benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

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

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

71. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and provide them with the requisite compensation,

1 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward
2 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with a
3 conscious and utter disregard for their legal rights, or the consequences to them, and with the
4 despicable intent of depriving them of their property and legal rights, and otherwise causing
5 them injury in order to increase company profits at the expense of these employees.

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

18 19 **THIRD CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

21 **[Cal. Lab. Code § 510]**

22 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
23 **Defendants)**

24 73. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
25 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
26 paragraphs of this Complaint.

27 74. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
28 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California

1 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
2 to pay these employees for all overtime worked, including, work performed in excess of eight
3 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
4 workweek.

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

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

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

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

26 79. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT

1 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
2 violation of the California Labor Code, the Industrial Welfare Commission requirements and
3 other applicable laws and regulations. As a direct result of DEFENDANT's unlawful wage
4 practices as alleged herein, the PLAINTIFFS and the other members of the CALIFORNIA
5 LABOR SUB-CLASS did not receive full compensation for overtime worked.

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

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

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

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

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

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

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

17
18 86. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
19 CLASS therefore request recovery of all overtime wages, according to proof, interest,
20 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in
21 a sum as provided by the California Labor Code and/or other applicable statutes. To the
22 extent minimum and/or overtime compensation is determined to be owed to the
23 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
24 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
25 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
26 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
27 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
28

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

3
4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

10
11 **FIFTH CAUSE OF ACTION**

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

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

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

16 91. PLAINTIFFS, 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 92. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
20 from time to time required to work in excess of four (4) hours without being provided ten
21 (10) minute rest periods. Further, these employees from time to time were denied their first
22 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
23 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
24 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
25 (10) minutes for some shifts worked of ten (10) hours or more from time to time.
26 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not
27 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
28

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

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

8 94. As a proximate result of the aforementioned violations, PLAINTIFFS 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
13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

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

- 23 (1) gross wages earned,
24 (2) total hours worked by the employee, except for any employee whose compensation
25 is solely based on a salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
27 Commission,
28 (3) the number of piecerate 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 97. From time to time, DEFENDANT also failed to provide PLAINTIFFS 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 things,
10 gross wages earned and all applicable hourly rates in effect during the pay period and the
11 corresponding amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA
12 LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements
13 should reflect all applicable hourly rates during the pay period and the total hours worked,
14 and the applicable pay period in which the wages were earned pursuant to California Labor
15 Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and
16 other CALIFORNIA LABOR SUB-CLASS Members failed to identify such information.
17 More specifically, the wage statements failed to identify the accurate total hours worked each
18 pay period. When the hours shown on the wage statements were added up, they did not equal
19 the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2).
20 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
21 PLAINTIFFS an itemized wage statement that lists all the requirements under California
22 Labor Code 226. As a result, DEFENDANT from time to time provided PLAINTIFFS and
23 the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
24 violated Cal. Lab. Code § 226.

25 98. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
26 Code § 226, causing injury and damages to PLAINTIFFS 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 of

1 employment taxes which were not properly paid to state and federal tax authorities. These
2 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the
3 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 PLAINTIFFS and each respective member of the
8 CALIFORNIA LABOR SUB-CLASS herein).

9
10 **SEVENTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 2802]**

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

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

18 100. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

24 101. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
25 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
26 CLASS members for required expenses incurred in the discharge of their job duties for
27 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
28 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
limited to, costs related to using their personal cellular phones on behalf of and for the
benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR

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

12 102. PLAINTIFFS therefore demand reimbursement for expenditures or losses
13 incurred by themselves and the CALIFORNIA LABOR SUB-CLASS members in the
14 discharge of their job duties for DEFENDANT, or their obedience to the directions of
15 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

16 **EIGHTH CAUSE OF ACTION**

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

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

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

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

24 104. Cal. Lab. Code § 200 provides, in relevant part, that:

25 As used in this article:

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

27 (b) "Labor" includes labor, work, or service whether rendered or performed
28 under contract, subcontract, partnership, station plan, or other agreement if

1 the labor to be paid for is performed personally by the person demanding
2 payment.

3 105. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges
4 an employee, the wages earned and unpaid at the time of discharge are due and payable
5 immediately.”

6 106. Cal. Lab. Code § 202 provides, in relevant part, that:

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

12 107. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR
13 SUB-CLASS Members’ employment contract.

14 108. Cal. Lab. Code § 203 provides, in relevant part, that:

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

19 109. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
20 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
21 owed as required by law. Additionally, at all times during the term of PLAINTIFFS’
22 employment with DEFENDANT, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
23 Members earned and accrued vested vacation and holiday time on the date of their
24 termination pursuant to DEFENDANT's uniform vacation policies and applicable California
25 law. The amount of vacation pay PLAINTIFFS and the other CALIFORNIA LABOR SUB-
26 CLASS Members earned and accumulated is evidenced by DEFENDANT’s business
27 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
28 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay

1 such wages at the regular rate of pay and more specifically the final rate of pay that included
2 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
3 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFFS and other
4 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of
5 including all of PLAINTIFFS' and CALIFORNIA LABOR SUB-CLASS Members' non-
6 discretionary incentive compensation into the vacation wage payment calculations.
7 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
8 PLAINTIFFS and other CALIFORNIA LABOR CLASS Members would be paid vacation
9 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
10 practice, policy and procedure to deny paying the PLAINTIFFS and the other members of the
11 CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
12 DEFENDANT failed to pay the PLAINTIFFS and the members of the CALIFORNIA
13 LABOR SUB-CLASS all vested vacation time as wages due upon employment termination,
14 in violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
15 DEFENDANT underpaid waiting time penalties to PLAINTIFFS and other CALIFORNIA
16 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
17 PLAINTIFFS' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
18 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
19 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide
20 compensation for earned, accrued and vested vacation and holiday time, as well as the
21 corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
22 unlawful, unfair and deceptive practice to the detriment of the PLAINTIFFS and the
23 members of the CALIFORNIA LABOR SUB-CLASS . DEFENDANT's uniform practice
24 and policy of failing to pay the LABOR SUB-CLASS Members for all vested vacation and
25 holiday time accumulated at employment termination violated and continues to violate
26 Section 227.3 of the California Labor Code.

27 110. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
28 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated

1 and who have not been fully paid their wages due to them, PLAINTIFFS demand thirty days
2 of pay as penalty for not paying all wages due at time of termination for all employees who
3 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
4 demand an accounting and payment of all wages due, plus interest and statutory costs as
5 allowed by law.

6
7 **NINTH CAUSE OF ACTION**

8 **For Failure to Pay Sick Pay Wages**

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

10 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**
11 **and Against All Defendants)**

12 111. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
13 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
14 paragraphs of this Complaint.

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

28 113. As a matter of policy and practice, DEFENDANT pays sick pay wages to

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

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

26 115. As alleged herein and as a matter of policy and practice, DEFENDANT
27 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay

1 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246, among
2 other Labor Code provisions. PLAINTIFFS are informed and believes that DEFENDANT
3 was advised by skilled lawyers and knew, or should have known, of the mandates of the
4 Labor Code as it relates to PLAINTIFFS' allegations, especially since the California
5 Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those
6 benefits to which an employee is entitled as a part of his or her compensation, including
7 money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods.,*
8 *Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully fails
9 to timely pay PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-
10 CLASS all sick pay wages due, DEFENDANT is subject to applicable penalties.

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

15
16 **TENTH CAUSE OF ACTION**

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

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

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

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

22 118. PAGA is a mechanism by which the State of California itself can enforce state labor
23 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
24 labor law enforcement agencies. An action to recover civil penalties under PAGA is
25 fundamentally a law enforcement action designed to protect the public and not to benefit private
26 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
27 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
28 PAGA, the California Legislature specified that "it was ... in the public interest to allow

1 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
2 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
3 arbitration.

4 119. PLAINTIFF, and such persons that may be added from time to time who satisfy the
5 requirements and exhaust the administrative procedures under the Private Attorney General Act,
6 bring this Representative Action on behalf of the State of California with respect to themselves
7 and all individuals who are or previously were employed by DEFENDANT in California,
8 including any employees staffed with DEFENDANT by a third party, and classified as
9 nonexempt employees ("AGGRIEVED EMPLOYEES") during the time period of April 15,
10 2023 until a date as determined by the Court (the "PAGA PERIOD").

11 120. On April 15, 2024, PLAINTIFF gave written notice by electronic mail to the
12 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
13 employer of the specific provisions of this code alleged to have been violated as required by
14 Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein
15 (*PAGA Notice only without draft complaint*). The statutory waiting period for PLAINTIFF to
16 add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
17 PLAINTIFF may pursue a representative civil action under PAGA pursuant to Section 2699 as
18 the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
19 defined.

20 121. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
22 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
23 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
24 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
25 expenses, (f) failed to provide wages when due, (g) failed to provide suitable seating, and (h)
26 failed to provide gratuities, all in violation of the applicable Labor Code sections listed in Labor
27 Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512,
28 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section

1 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14)
2 (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
3 penalties as a result of such conduct.¹ PLAINTIFF hereby seek recovery of civil penalties as
4 prescribed by the Labor Code Private Attorney General Act of 2004 as the representatives of the
5 State of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
6 EMPLOYEES.

7 122. All of the conduct and violations alleged herein occurred during the PAGA
8 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
9 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
10 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
11 AJDAR 12157 (Certified for Publication 12/19/18).

12
13 **ELEVENTH CAUSE OF ACTION**

14 Wrongful Termination In Violation of Public Policy
15 (By Plaintiff Gossett Against All Defendants)

16 123. PLAINTIFFS reallege and incorporate by reference, as though fully set forth herein,
17 the prior paragraphs of this Complaint.

18 124. On and around spring of 2023, and continuing throughout the rest of Plaintiff
19 Gossett's employment, Plaintiff Gossett engaged in protected activity by reporting safety
20 violations to his superiors regarding DEFENDANT's illegal safety practices. On or around June
21 8, 2023, Plaintiff Gossett slipped on oil that had been improperly disposed of and/or improperly
22 contained and cleaned. As a result of the slip and fall due to the oil spill, Plaintiff Gossett
23 suffered physical injuries, causing Plaintiff Gossett to end his shift early. A worker's
24 compensation claim was initiated to address Plaintiff Gossett's injuries due to the slip in the oil
25 spill, but the Regional Manager, Mr. Ken Briggs, intervened to stop the progress of the worker's
26 compensation claim.

27 125. Subsequent to Plaintiff Gossett's participation in protective activity by reporting
28 safety violations to Plaintiff Gossett's superiors about DEFENDANTS illegal practices,

1 DEFENDANT subjected Plaintiff Gossett to adverse employment actions by retaliating against
2 Plaintiff Gossett. Specifically, on or around June 16, 2023, DEFENDANT terminated
3 PLAINTIFF's employment with DEFENDANT.

4 126. As a proximate result of DEFENDANT'S willful, knowing, and intentional act,
5 Plaintiff Gossett has suffered and continues to suffer humiliation, emotional distress, and mental
6 and physical pain and anguish, all to PLAINTIFF's damage in a sum according to proof.

7 127. As a result of DEFENDANT'S adverse employment actions against Plaintiff Gossett,
8 Plaintiff Gossett has suffered general and special damages in sums according to proof.

9 128. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive
10 manner, and fraudulent manner entitling Plaintiff Gossett to punitive damages against
11 DEFENDANT.

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
15 severally, as follows:

16 1. On behalf of the CALIFORNIA CLASS:

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

27 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
28

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
2 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as
3 a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFFS and the
6 other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
7 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
8 statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
10 which a violation occurs and one hundred dollars (\$100) per each member of the
11 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;
- 16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197;
- 18 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
19 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
20 costs of suit.; and,
- 21 G) The wages of all terminated employees in the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
23 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 24 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 25 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
26 General Act of 2004.
- 27 4. On behalf of Plaintiff Gossett for the Eleventh cause of action:
- 28 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

- 1 B) Special and General damages according to proof;
2 C) Statutory damages, penalties and attorney's fees;
3 D) For punitive damages in an amount necessary to make an example of and to
4 punish DEFENDANT and deter DEFENDANT from engaging in future similar
5 conduct;
6 E) For loss of earnings (both past and future); and,
7 F) For interest at the legal rate in an amount according to proof.

8
9
10 5. On all claims:

- 11 A) An award of interest, including prejudgment interest at the legal rate;
12 B) Such other and further relief as the Court deems just and equitable; and,
13 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
14 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or
15 §2802.

16 Dated: December 3, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

17
18 By: /s/ Nicholas J. De Blouw

19 Norman B. Blumenthal
Nicholas J. De Blouw

20 **CENTURION TRIAL ATTORNEYS, APC**

21 Ryan Stygar (State Bar #332764)
22 8880 Rio San Diego Dr., Suite 800
23 San Diego, CA 92108

24 *Attorneys for Plaintiffs*
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DEMAND FOR A JURY TRIAL

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

Dated: December 3, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

CENTURION TRIAL ATTORNEYS, APC
Ryan Stygar (State Bar #332764)
8880 Rio San Diego Dr., Suite 800
San Diego, CA 92108

Attorneys for Plaintiffs

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

April 15, 2024

CA3225

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Broadbase, Inc.
Certified Mail #9589071052700408543694
KYLE FOWLER
1471 SHORE STREET
WEST SACRAMENTO, CA 95691

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Broadbase, Inc. in California, including any employees staffed with Broadbase, Inc. a third party, and classified as non-exempt employees during the time period of April 15, 2023 until a date as determined by the Court. Our offices represent Plaintiffs Brandon Gossett and Michael Chaney (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against Broadbase, Inc. (“Defendant”). Plaintiff Gossett was employed by Defendant in California from January 24, 2022 to June 20, 2023. Plaintiff Chaney was employed by Defendant in California from March of 2022 to September 2023. Plaintiffs were at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFFS 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 PLAINTIFFS 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, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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 Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs therefore incorporate 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 Plaintiffs 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 Plaintiffs 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.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Yesenia Silva, am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On November 14, 2024, I served the document(s) described as:

1. JOINT STIPULATION AND [PROPOSED] ORDER FOR LEAVE FOR PLAINTIFFS TO FILE A FIRST AMENDED CLASS ACTION COMPLAINT

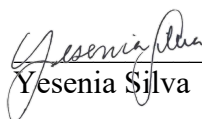
X **(BY ELECTRONIC SERVICE):** I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

BOUTIN JONES INC
Kimberly Lucia (Bar No. 266503)
klucia@boutinjones.com
Andrew Ducart (Bar No. 293714)
aducart@boutinjones.com
Sofia Schersei (Bar No. 348194)
sschersei@boutinjones.com
555 Capitol Mall, Suite 1500
Suite 1500
Sacramento, CA 95814
Telephone: 916.321.4444
Facsimile: 916.441.7597

Cc: Monica Paniagua
mpaniagua@boutinjones.com

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

Executed on November 14, 2024, at San Diego, California.



Yesenia Silva