

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

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WRITERS EXT:

1004

July 3, 2024

CA3323

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Lubrizol Advanced Materials, Inc.
Certified Mail #9589071052701151772515
C T Corporation System
Amanda Garcia
330 N. Brand Blvd, Suite 700
Glendale, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Extrumed, Inc. and/or Lubrizol Advanced Materials, Inc. and/or Lubrizol Life Science, Inc. in California, including any employees staffed with Extrumed, Inc. and/or Lubrizol Advanced Materials, Inc. and/or Lubrizol Life Science, Inc. by a third party, and classified as non-exempt employees during the time period of July 3, 2023 until a date as determined by the Court. Our offices represent Plaintiff Luis Lujano (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Extrumed, Inc. and/or Lubrizol Advanced Materials, Inc. and/or Lubrizol Life Science, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California since February of 2023. Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday,

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

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

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

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

Respectfully,

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

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Online Filing	Certified Mail #9589071052701151772539
	C T Corporation System
	Amanda Garcia
	330 N. Brand Blvd, Suite 700
	Glendale, CA 91203

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“Aggrieved Employees” refers to all individuals who are or previously were employed by Extrumed, Inc. and/or Lubrizol Advanced Materials, Inc. and/or Lubrizol Life Science, Inc. in California, including any employees staffed with Extrumed, Inc. and/or Lubrizol Advanced Materials, Inc. and/or Lubrizol Life Science, Inc. by a third party, and classified as non-exempt employees during the time period of July 3, 2023 until a date as determined by the Court. Our offices represent Plaintiff Luis Lujano (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Extrumed, Inc. and/or Lubrizol Advanced Materials, Inc. and/or Lubrizol Life Science, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California since February of 2023. Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday,

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

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Respectfully,

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

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Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

LUIS LUJANO, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

EXTRUMED, INC., a Corporation;
LUBRIZOL ADVANCED MATERIALS,
INC., a Corporation; LUBRIZOL LIFE
SCIENCE, INC., a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

8 2. Lubrizol Advanced Materials, Inc. is a corporation that at all relevant times
9 mentioned herein conducted and continues to conduct substantial business in California.

10 3. Lubrizol Life Science, Inc. is a corporation that at all relevant times mentioned
11 herein conducted and continues to conduct substantial business in California.

12 4. Extrumed, Inc. and Lubrizol Advanced Materials, Inc. and Lubrizol Life Science,
13 Inc. are the joint employers of PLAINTIFF as evidenced by paycheck and by the company
14 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers
15 for the conduct alleged herein, and are therefore collectively referred to herein as
16 (“DEFENDANT”).

17 5. DEFENDANT provides manufacturing services for thermoplastic extrusion
18 solutions.

19 6. PLAINTIFF is currently employed by DEFENDANT in California. PLAINTIFF’S
20 employment with DEFENDANT started in February of 2023. PLAINTIFF has been at all times
21 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled
22 to the legally required meal and rest periods and payment of minimum and overtime wages due
23 for all time worked.

24 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,
25 defined as all individuals who are or previously were employed by Extrumed, Inc. and/or
26 Lubrizol Advanced Materials, Inc. and/or Lubrizol Life Science, Inc. in California, including
27 any employees staffed with Extrumed, Inc. and/or Lubrizol Advanced Materials, Inc. and/or
28 Lubrizol Life Science, Inc. by a third party, and classified as non-exempt employees (the

1 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
2 filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA
3 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
4 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

1 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
2 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
3 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
4 of the conduct of the Defendants' agents, servants and/or employees.

5 **THE CONDUCT**

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

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

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

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

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

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

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

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

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

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

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

15 19. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
16 employees be calculated by dividing the employee's total wages, not including overtime
17 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
18 days of employment.

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

25 21. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
26 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
27 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
28

1 informed and believes and based thereon alleges that such failure to pay sick pay at regular
2 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
3 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
4 Sections 201-203.

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

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

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

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

8 25. In violation of the applicable sections of the California Labor Code and the
9 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
10 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
11 knowingly and systematically failed to provide PLAINTIFF and the other Aggrieved
12 Employees suitable seating when the nature of these employees' work reasonably permitted
13 sitting.

14 26. DEFENDANT knew or should have known that PLAINTIFF and other
15 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
16 not interfere with the performance of their duties, and that DEFENDANT did not provide
17 suitable seating and/or did not allow them to sit when it did not interfere with the
18 performance of their duties.

19 27. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
20 Employees, DEFENDANT violated California Labor Code Section 1198 and California
21 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
22 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on
23 behalf of PLAINTIFF and other Aggrieved Employees as provided herein. Providing
24 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
25 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
26 Code and regulations promulgated thereunder as herein alleged.

27 28. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
28 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage

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

10 **JURISDICTION AND VENUE**

11 29. This Court has jurisdiction over this Action pursuant to California Code of
12 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
13 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
14 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

21 **THE CALIFORNIA CLASS**

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

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

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

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

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

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

13 37. 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 PLAINTIFF are typical of the claims
23 of each member of the CALIFORNIA CLASS. PLAINTIFF, 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 PLAINTIFF and

1 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
2 result of DEFENDANT's employment practices. PLAINTIFF 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 PLAINTIFF will fairly and adequately represent and
7 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 PLAINTIFF and the members of the CALIFORNIA CLASS that would
11 make class certification inappropriate. Counsel for the CALIFORNIA
12 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
13 Members.

14 38. 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
19 CLASS 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 PLAINTIFF 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 39. 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
2 and 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
5 will 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) PLAINTIFF, 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
16 the damages and injuries which DEFENDANT's actions have inflicted
17 upon 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

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

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

THE CALIFORNIA LABOR SUB-CLASS

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

42. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to

1 which these employees are entitled in order to unfairly cheat the competition and unlawfully
2 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
3 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
4 should be adjusted accordingly.

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

10 44. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

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

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

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

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

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

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA LABOR SUB-CLASS which
9 would establish incompatible standards of conduct for the
10 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

11 2) Adjudication with respect to individual members of the
12 CALIFORNIA LABOR SUB-CLASS which would as a
13 practical matter be dispositive of interests of the other members
14 not party to the adjudication or substantially impair or impede
15 their ability to protect their interests.

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

23 (c) Common questions of law and fact predominate as to the members of
24 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
25 and violations of California Law as listed above, and predominate over
26 any question affecting only individual CALIFORNIA LABOR SUB-
27 CLASS Members, and a Class Action is superior to other available
28

1 methods for the fair and efficient adjudication of the controversy,
2 including consideration of:

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

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

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

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

1 the damages and injuries which DEFENDANT's actions have inflicted
2 upon the CALIFORNIA LABOR SUB-CLASS;

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

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

10 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
11 ascertainable from the business records of DEFENDANT. The
12 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
13 CLASS Members who worked for DEFENDANT in California at any
14 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

15 (i) Class treatment provides manageable judicial treatment calculated to
16 bring a efficient and rapid conclusion to all litigation of all wage and
17 hour related claims arising out of the conduct of DEFENDANT as to
18 the members of the CALIFORNIA LABOR SUB-CLASS.

19
20 **FIRST CAUSE OF ACTION**

21 **For Unlawful Business Practices**

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

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

24 50. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
25 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
26 this Complaint.

27 51. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
28 Code § 17021.

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

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

13 Cal. Bus. & Prof. Code § 17203.

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

22 54. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
23 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
24 unscrupulous or substantially injurious to employees, and were without valid justification or
25 utility for which this Court should issue equitable and injunctive relief pursuant to Section
26 17203 of the California Business & Professions Code, including restitution of wages
27 wrongfully withheld.

28 55. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
fraudulent in that DEFENDANT’s policy and practice failed to provide the legally mandated
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

1 reimburse all necessary business expenses incurred, and failed to provide Fair Labor
2 Standards Act overtime wages due for overtime worked as a result of failing to include non-
3 discretionary incentive compensation into their regular rates of pay for purposes of
4 computing the proper overtime pay due to a business practice that cannot be justified,
5 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
6 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
7 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
8 restitution of wages wrongfully withheld.

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

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

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

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

25 60. By and through the unlawful and unfair business practices described herein,
26 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and
27 the other members of the CALIFORNIA CLASS, including earned wages for all time
28 worked, and has deprived them of valuable rights and benefits guaranteed by law and

1 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
2 allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

14 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
15 entitled to, and do, seek a declaration that the described business practices are unlawful,
16 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT
17 from engaging in any unlawful and unfair business practices in the future.

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

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1 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
2 wage pay.

3 71. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately calculated the correct time worked and consequently underpaid the actual time
5 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
6 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
7 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

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

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

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

25 75. DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
27 time worked. DEFENDANT elected, either through intentional malfeasance or gross
28 nonfeasance, to not pay employees for their labor as a matter of company policy, practice

1 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
3 wages for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

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

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

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

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

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

24 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
25 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
26 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
27 including overtime work.
28

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

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

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

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

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

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

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

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

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

13
14 **FOURTH CAUSE OF ACTION**

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

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

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

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

22 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
23 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
24 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
25 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
26 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
27 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
28 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members

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

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

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

20 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

1 101. Cal. Labor Code § 226 provides that an employer must furnish employees with
2 an “accurate itemized” statement in writing showing:

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

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

1 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
2 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
3 to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

17
18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 2802]**

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

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

26 105. Cal. Lab. Code § 2802 provides, in relevant part, that:

27 An employer shall indemnify his or her employee for all necessary
28 expenditures or losses incurred by the employee in direct consequence of the
discharge of his or her duties, or of his or her obedience to the directions of

1 the employer, even though unlawful, unless the employee, at the time of
2 obeying the directions, believed them to be unlawful.

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

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

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

5 **and Against All Defendants)**

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

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

22 110. As a matter of policy and practice, DEFENDANT pays sick pay wages to
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
24 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
25 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
26 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
27 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
28 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-

1 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total hours
3 worked in the full pay periods of the prior 90 days of employment. As a result,
4 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
5 CALIFORNIA LABOR-SUB-CLASS.

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

20 112. As alleged herein and as a matter of policy and practice, DEFENDANT
21 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
22 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
23 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246,
24 among other Labor Code provisions. PLAINTIFF is informed and believes that
25 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
26 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
27 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
28 include those benefits to which an employee is entitled as a part of his or her compensation,

1 including money, room, board, clothing, vacation pay, *and sick pay.*” *Murphy v. Kenneth*
2 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
3 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
4 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
5 penalties.

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

10 11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

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

- 26 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
27 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
28 action pursuant to Cal. Code of Civ. Proc. § 382;

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

21 3. On all claims:

- 22 A) An award of interest, including prejudgment interest at the legal rate;
- 23 B) Such other and further relief as the Court deems just and equitable; and,
- 24 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
25 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
26 and/or §2802.
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1 Dated: June 17, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: June 17, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

Attorneys for Plaintiff