

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

**2255 CALLE CLARA  
LA JOLLA, CALIFORNIA 92037**

**Web Site: [www.bamlawca.com](http://www.bamlawca.com)**

**San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago**

**Phone: (858) 551-1223**

**Fax: (858) 551-1232**

**WRITERS E-MAIL:  
[Nick@bamlawca.com](mailto:Nick@bamlawca.com)**

**WRITERS EXT:  
1004**

February 13, 2025  
CA3608

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

Club Demonstration Services, Inc.  
Certified Mail #9589071052702306888846  
CSC - LAWYERS INCORPORATING  
SERVICE  
BECKY DEGEORGE  
2710 GATEWAY OAKS DRIVE, SUITE  
150N  
SACRAMENTO CA, 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100, 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 Club Demonstration Services, Inc. including any employees staffed with Club Demonstration Services, Inc. by a third party and classified as non-exempt employees during the time period of February 13, 2024 until a date as determined by the Court. Our offices represent Plaintiff William Gustin (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Club Demonstration Services, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from November of 2021 until October of 2024. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and

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

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

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

Your earliest response to this notice is appreciated. If you have any questions or 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.

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)  
Kyle R. Nordrehaug (State Bar #205975)  
Aparajit Bhowmik (State Bar #248066)  
Nicholas J. De Blouw (State Bar #280922)  
Victoria B. Rivapalacio (State Bar #275115)  
[victoria@bamlawca.com](mailto:victoria@bamlawca.com)  
2255 Calle Clara  
La Jolla, CA 92037  
Telephone: (858)551-1223  
Facsimile: (858) 551-1232  
Website: [www.bamlawca.com](http://www.bamlawca.com)

*Attorneys for Plaintiff*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF FRESNO**

WILLIAM GUSTIN, an individual, on behalf of  
himself and on behalf of all persons similarly  
situated,

Plaintiff,

vs.

CLUB DEMONSTRATION SERVICES, 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;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB CODE §§ 201-203, 233, 246.

**DEMAND FOR A JURY TRIAL**

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

4  
5 **THE PARTIES**

6 1. Club Demonstration Services, Inc. ("DEFENDANT") is a corporation that at all  
7 relevant times mentioned herein conducted and continues to conduct substantial business in  
8 California.

9 2. DEFENDANT provides in-store marketing for Costco.

10 3. PLAINTIFF was employed by DEFENDANT in California from November of  
11 2021 to October of 2024. PLAINTIFF was at all times classified by DEFENDANT as a  
12 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest  
13 periods and payment of minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
15 defined as all individuals who are or previously were employed by DEFENDANT in California,  
16 including any employees staffed with DEFENDANT by a third party, and classified as  
17 non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning  
18 March 20, 2024 and ending on the date as determined by the Court (the "CALIFORNIA CLASS  
19 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS  
20 Members is under five million dollars (\$5,000,000.00).

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

1 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA  
2 CLASS who have been economically injured by DEFENDANT's past and current unlawful  
3 conduct, and all other appropriate legal and equitable relief.

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

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

### 21 22 THE CONDUCT

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

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

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

23 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
24 Members' compensation is DEFENDANT's non-discretionary incentive program that paid  
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
26 performance for DEFENDANT. The non-discretionary incentive program provided all  
27 employees paid on an hourly basis with incentive compensation when the employees met the  
28 various performance goals set by DEFENDANT. However, when calculating the regular

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

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

23 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other  
24 CALIFORNIA CLASS Members were also required from time to time to work in excess of  
25 four (4) hours without being provided ten (10) minute rest periods. Further, these employees  
26 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at  
27 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten  
28 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to

1 time, and a first, second and third rest period of at least ten (10) minutes for some shifts  
2 worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA  
3 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,  
4 the applicable California Wage Order requires employers to provide employees with off-  
5 duty rest periods, which the California Supreme Court defined as time during which an  
6 employee is relieved from all work related duties and free from employer control. In so  
7 doing, the Court held that the requirement under California law that employers authorize and  
8 permit all employees to take rest period means that employers must relieve employees of all  
9 duties and relinquish control over how employees spend their time which includes control  
10 over the locations where employees may take their rest period. Employers cannot impose  
11 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes  
12 back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA  
13 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule  
14 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work  
15 premises during their rest period.

16 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to  
17 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the  
18 actual amount of time these employees worked. Pursuant to the Industrial Welfare  
19 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other  
20 CALIFORNIA CLASS Members for all time worked, meaning the time during which an  
21 employee was subject to the control of an employer, including all the time the employee was  
22 permitted or suffered to permit this work. DEFENDANT required these employees to work  
23 off the clock without paying them for all the time they were under DEFENDANT's control.  
24 As such, DEFENDANT knew or should have known that PLAINTIFF and the other  
25 members of the CALIFORNIA CLASS were under compensated for all time worked. As a  
26 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by  
27 working without their time being accurately recorded and without compensation at the  
28 applicable minimum wage and overtime wage rates. To the extent that the time worked off

1 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay  
2 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,  
3 1197, and 1197.1.

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

23 15. DEFENDANT underpaid sick pay wages to PLAINTIFF and other  
24 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in  
25 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt  
26 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate  
27  
28

1 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS  
2 Members at their base rates of pay.

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

7 17. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay  
8 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely  
9 earned non-discretionary incentive wages which increased their regular rate of pay.  
10 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and  
11 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,  
12 as required under Cal. Lab. Code Section 246.

13 18. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF  
14 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe  
15 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF are  
16 informed and believe and based thereon allege that such failure to pay sick pay at regular  
17 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose  
18 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code  
19 Sections 201-203.

20 19. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer  
21 to collect or receive from an employee any part of wages theretofore paid by said employer  
22 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and  
23 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from  
24 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,  
25 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF  
26 and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these  
27 employees all wages due at each applicable pay period and upon termination. PLAINTIFF  
28

1 and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal  
2 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

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

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

24 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally  
25 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage  
26 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due  
27 to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-  
28 duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for

1 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the  
2 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties  
3 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to  
4 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's  
5 business records. The amount in controversy for PLAINTIFF individually does not exceed  
6 the sum or value of \$75,000.

### 7 **JURISDICTION AND VENUE**

8 23. This Court has jurisdiction over this Action pursuant to California Code of  
9 Civil Procedure, Section 410.10 and California Business & Professions Code, Section  
10 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly  
11 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

### 18 **THE CALIFORNIA CLASS**

19 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and  
20 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, (the "UCL") as  
21 a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,  
22 defined as all individuals who are or previously were employed by DEFENDANT in  
23 California, including any employees staffed with DEFENDANT by a third party, and  
24 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the  
25 period March 20, 2024 and ending on the date as determined by the Court (the  
26 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of  
27 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).  
28

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

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

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

20           29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
21 CLASS Members is impracticable.

22           30. DEFENDANT violated the rights of the CALIFORNIA CLASS under  
23 California law by:

- 24           (a) Committing an act of unfair competition in violation of , Cal. Bus. &  
25 Prof. Code §§ 17200, (the "UCL"), by unlawfully, unfairly and/or  
26 deceptively having in place company policies, practices and procedures  
27 that failed to record and pay PLAINTIFF and the other members of the  
28 CALIFORNIA CLASS for all time worked, including minimum wages

1 owed and overtime wages owed for work performed by these  
2 employees; and,

- 3 (b) Committing an act of unfair competition in violation of the UCL, by  
4 failing to provide the PLAINTIFF and the other members of the  
5 CALIFORNIA CLASS with the legally required meal and rest periods.

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

- 8 (a) The persons who comprise the CALIFORNIA CLASS are so numerous  
9 that the joinder of all such persons is impracticable and the disposition  
10 of their claims as a class will benefit the parties and the Court;  
11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief  
12 issues that are raised in this Complaint are common to the  
13 CALIFORNIA CLASS will apply to every member of the  
14 CALIFORNIA CLASS;  
15 (c) The claims of the representative PLAINTIFF are typical of the claims  
16 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all  
17 the other members of the CALIFORNIA CLASS, were classified as  
18 non-exempt employees paid on an hourly basis who were subjected to  
19 the DEFENDANT's deceptive practice and policy which failed to  
20 provide the legally required meal and rest periods to the CALIFORNIA  
21 CLASS and thereby underpaid compensation to PLAINTIFF and  
22 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a  
23 result of DEFENDANT's employment practices. PLAINTIFF and the  
24 members of the CALIFORNIA CLASS were and are similarly or  
25 identically harmed by the same unlawful, deceptive and unfair  
26 misconduct engaged in by DEFENDANT; and,  
27 (d) The representative PLAINTIFF will fairly and adequately represent and  
28 protect the interest of the CALIFORNIA CLASS, and have retained

counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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

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

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

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

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate

1 exclusively to restitution because through this claim  
2 PLAINTIFF seek declaratory relief holding that the  
3 DEFENDANT's policy and practices constitute unfair  
4 competition, along with declaratory relief, injunctive relief, and  
5 incidental equitable relief as may be necessary to prevent and  
6 remedy the conduct declared to constitute unfair competition;

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

- 13 1) The interests of the members of the CALIFORNIA CLASS in  
14 individually controlling the prosecution or defense of separate  
15 actions in that the substantial expense of individual actions will  
16 be avoided to recover the relatively small amount of economic  
17 losses sustained by the individual CALIFORNIA CLASS  
18 Members when compared to the substantial expense and burden  
19 of individual prosecution of this litigation;
- 20 2) Class certification will obviate the need for unduly duplicative  
21 litigation that would create the risk of:
  - 22 A. Inconsistent or varying adjudications with respect to  
23 individual members of the CALIFORNIA CLASS, which  
24 would establish incompatible standards of conduct for the  
25 DEFENDANT; and/or,
  - 26 B. Adjudications with respect to individual members of the  
27 CALIFORNIA CLASS would as a practical matter be  
28

dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

25 34. DEFENDANT maintains records from which the Court can ascertain and  
26 identify by job title each of DEFENDANT's employees who have been intentionally  
27 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.  
28

1 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of  
2 similarly situated employees when they have been identified.

3  
4 **THE CALIFORNIA LABOR SUB-CLASS**

5 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,  
6 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members  
7 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in  
8 California, including any employees staffed with DEFENDANT by a third party, and  
9 classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any  
10 time during March 20, 2024 and ending on the date as determined by the Court (the  
11 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. §  
12 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-  
13 CLASS Members is under five million dollars (\$5,000,000.00).

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

26 37. DEFENDANT maintains records from which the Court can ascertain and  
27 identify by name and job title, each of DEFENDANT’s employees who have been  
28 intentionally subjected to DEFENDANT’s company policy, practices and procedures as

1 herein alleged. PLAINTIFF will seek leave to amend the complaint to include any  
2 additional job titles of similarly situated employees when they have been identified.

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

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

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

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

- 22 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the  
23 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-  
24 CLASS all wages due for overtime worked, for which DEFENDANT is  
25 liable pursuant to Cal. Lab. Code § 1194;
- 26 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1, by failing to  
27 accurately pay PLAINTIFF and the members of the CALIFORNIA  
28

LABOR SUB-CLASS the correct minimum wage pay for which  
DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
- (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the

CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, were non-exempt employees paid on an hourly basis who were subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual

CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

1 making final class-wide relief appropriate with respect to the  
2 CALIFORNIA LABOR SUB-CLASS as a whole;

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

12  
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

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

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

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

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

26 Any person who engages, has engaged, or proposes to engage in unfair  
27 competition may be enjoined in any court of competent jurisdiction. The court  
28 may make such orders or judgments, including the appointment of a receiver,  
as may be necessary to prevent the use or employment by any person of any  
practice which constitutes unfair competition, as defined in this chapter, or as

1        may be necessary to restore to any person in interest any money or property,  
2        real or personal, which may have been acquired by means of such unfair  
3        competition.

4        Cal. Bus. & Prof. Code § 17203.

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

13       48. By the conduct alleged herein, DEFENDANT's practices were unlawful and  
14       unfair in that these practices violate public policy, were immoral, unethical, oppressive,  
15       unscrupulous or substantially injurious to employees, and were without valid justification or  
16       utility for which this Court should issue equitable and injunctive relief pursuant to Section  
17       17203 of the California Business & Professions Code, including restitution of wages  
18       wrongfully withheld.

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

1 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of  
2 wages wrongfully withheld.

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

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

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

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

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

25 55. All the acts described herein as violations of, among other things, the  
26 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the  
27 California Labor Code, were unlawful and in violation of public policy, were immoral,  
28

1 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,  
2 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200.

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Minimum Wages**

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

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

23 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15  
16 **THIRD CAUSE OF ACTION**

17 **For Failure To Pay Overtime Compensation**

18 **[Cal. Lab. Code § 510]**

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

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

24 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
25 CLASS bring a claim for DEFENDANT's willful and intentional violations of the  
26 California Labor Code and the Industrial Welfare Commission requirements for  
27 DEFENDANT's failure to pay these employees for all overtime worked, including, work  
28

1 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,  
2 and/or forty (40) hours in any workweek.

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

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

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

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

24 78. In committing these violations of the California Labor Code, DEFENDANT  
25 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
26 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT  
27 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in  
28 violation of the California Labor Code, the Industrial Welfare Commission requirements

1 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful  
2 wage practices as alleged herein, the PLAINTIFF and the other members of the  
3 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime  
4 worked.

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

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

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

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

26 88. DEFENDANT further violates California Labor Code §§ 226.7 and the  
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA  
28 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with

1 the applicable Wage Order, one additional hour of compensation at each employee's regular  
2 rate of pay for each workday that a meal period was not provided.

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

7 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

26 92. DEFENDANT further violated California Labor Code §§ 226.7 and the  
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA  
28 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with

1 the applicable Wage Order, one additional hour of compensation at each employee's regular  
2 rate of pay for each workday that rest period was not provided.

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

### 7 **SIXTH CAUSE OF ACTION**

#### 8 **For Failure to Provide Accurate Itemized Statements**

9 **[Cal. Lab. Code § 226]**

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

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

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

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

96. From time to time, DEFENDANT also failed to provide PLAINTIFF and the  
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate

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

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

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

3  
4 **SEVENTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

1 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this  
2 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF  
3 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify  
4 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for  
5 these expenses as an employer is required to do under the laws and regulations of California.

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

10 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

26 104. Cal. Lab. Code § 202 provides, in relevant part, that:

27 If an employee not having a written contract for a definite period quits his  
28 or her employment, his or her wages shall become due and payable not

1 later than 72 hours thereafter, unless the employee has given 72 hours  
2 previous notice of his or her intention to quit, in which case the employee  
3 is entitled to his or her wages at the time of quitting. Notwithstanding any  
4 other provision of law, an employee who quits without providing a 72-  
5 hour notice shall be entitled to receive payment by mail if he or she so  
6 requests and designates a mailing address. The date of the mailing shall  
7 constitute the date of payment for purposes of the requirement to provide  
8 payment within 72 hours of the notice of quitting.

9 105. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR  
10 SUB-CLASS Members' employment contract.

11 106. Cal. Lab. Code § 203 provides, in relevant part, that:

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

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

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

20 108. Therefore, as provided by Cal Lab. Code § 203, on behalf of PLAINTIFF and  
21 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated  
22 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days  
23 of pay as penalty for not paying all wages due at time of termination for all employees who  
24 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and  
25 demand an accounting and payment of all wages due, plus interest and statutory costs as  
26 allowed by law.

27 ///

28 ///

1 **NINTH 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)**

6 109. 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.

9 110. 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.

22 111. 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.

6 112. 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.

20 113. 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 are informed and believe 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. 4<sup>th</sup> 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.

6 114. 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 pray 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, Eighth,  
27 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-  
28 CLASS as a class 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.

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: February 13, 2025                      BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: \_\_\_\_\_  
Norman B. Blumenthal  
Nicholas J. De Blouw  
*Attorneys for Plaintiff*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR A JURY TRIAL**

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

Dated: February 13, 2025                      BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: \_\_\_\_\_  
Norman B. Blumenthal  
Nicholas J. De Blouw  
*Attorneys for Plaintiff*