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1004

July 16, 2024

CA3319

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Rady Children's Hospital-San Diego
Certified Mail #9589071052701151772812
ANGELA M VIEIRA
3020 CHILDREN'S WAY MC 5052
SAN DIEGO, CA 92123

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 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 Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Rady Children’s Hospital-San Diego in California, including any employees staffed with Rady Children’s Hospital-San Diego by a third party, as Clinical Research Coordinators and classified as exempt employees during the time period of July 16, 2023 until a date as determined by the Court. Our offices represent Plaintiff Esmeralda Elia (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Rady Children’s Hospital-San Diego (“Defendant”). Plaintiff was employed by Defendant in California as a Clinical Research Coordinator from September of 2023 to May 15, 2024 and entitled to overtime pay and the legally required meal and rest breaks and payment for all time worked under Defendant’s control. At all times during Plaintiff’s employment with Defendant, Plaintiff was classified as a salaried employee exempt from overtime wages and other related benefits. 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, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed

to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a) *et seq.* 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, 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 of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10
11 ESMERALDA ELIA, individual, on
12 behalf of herself and on behalf of all
persons similarly situated,

13 Plaintiff,

14 vs.

15 RADY CHILDREN'S HOSPITAL-SAN
16 DIEGO, a California Corporation; and
DOES 1 through 50, inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO PAY SICK WAGES IN VIOLATION OF CAL. LAB CODE §§201-204, 233, 246;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Esmeralda Elia ("PLAINTIFF"), individual, on behalf of herself and all other similarly
2 situated current and former employees, allege on information and belief, except their own acts
3 and knowledge, the following:

4
5 **THE PARTIES**

6 1. Rady Children's Hospital-San Diego ("DEFENDANT") is a corporation that
7 conducts regular and substantial business in the State of California. DEFENDANT operates
8 a hospital in San Diego County.

9 2. PLAINTIFF was employed by DEFENDANT in California as a Clinical Research
10 Coordinator ("CRC") from September 11, 2023 to May 15, 2024. At all times relevant during
11 PLAINTIFF's employment with DEFENDANT, PLAINTIFF was classified as a salaried
12 employee exempt from overtime wages and other related benefits.

13 3. The position of a Clinical Research Coordinator was represented by
14 DEFENDANT to PLAINTIFF and the other Clinical Research Coordinators as an exempt and
15 a salaried position.

16 4. To successfully compete against the other hospitals and healthcare companies
17 DEFENDANT substantially reduced its labor costs by placing the labor burden on a smaller
18 number of employees. The goal of overtime laws includes expanding employment throughout
19 the workforce by putting financial pressure on the employer and nurturing a stout job market,
20 as well as the important public policy goal of protecting employees in a relatively weak
21 bargaining position against the unfair scheme of uncompensated overtime work. An employer's
22 obligation to pay its employees wages is more than a matter of private concern between the
23 parties. That obligation is founded on a compelling public policy judgment that employees are
24 entitled to work a livable number of hours at a livable wage. In addition, statutes and
25 regulations that compel employers to pay overtime relate to fundamental issues of social welfare
26 worthy of protection. The requirement to pay overtime wages extends beyond the benefits
27 individual workers receive because overtime wages discourage employers from concentrating
28 work in a few overburdened hands and encourage employers to instead hire additional

1 employees. Especially in today's economic climate, the importance of spreading available work
2 to reduce unemployment cannot be overestimated.

3 5. The employees employed in the position with DEFENDANT as Clinical Research
4 Coordinator all performed the same primary job duty which was to provide the core day-to-day
5 routine activities of DEFENDANT's business. PLAINTIFF and other Clinical Research
6 Coordinators performed the finite set of tasks of conducting intake evaluations using a checklist
7 provided by DEFENDANT, coordinating IRB applications, entering data obtained from the
8 clinical trials into electronic case report forms, completing checklists provided by
9 DEFENDANT which included quality checking documents and notifying doctors of the next
10 day's procedures, and acting as information liaisons between DEFENDANT and
11 DEFENDANT's clients all in accordance with DEFENDANT's business policies and practices
12 Clinical Research Coordinators performed all of their job functions according to established
13 company policies, protocols and procedures. According to DEFENDANT's company policy,
14 while performing the job functions of a Clinical Research Coordinator, the Clinical Research
15 Coordinators were and are required from time to time to work in excess of eight (8) hours each
16 workday and more than forty (40) hours each workweek. PLAINTIFF and the other Clinical
17 Research Coordinators primarily performed the overwhelmingly routine day-to-day duties
18 described above and as such their work was not directly related to the management policies or
19 general business operations of DEFENDANT.

20 6. Given the circumstances of the job functions performed by the PLAINTIFF and
21 the other Clinical Research Coordinators , PLAINTIFF and other Clinical Research
22 Coordinators did not primarily perform office or non-manual work directly related to
23 policymaking and/or the general business operations of DEFENDANT. The work of the
24 PLAINTIFF and the other Clinical Research Coordinators did not require special training,
25 experience and/or knowledge and also did not involve the use of discretion and independent
26 judgment with respect to matters of significance of the enterprise. Instead, PLAINTIFF and the
27 other Clinical Research Coordinators primary job duty was and is performing day-to-day
28 routine and mundane data entry and following established checklists provided to them by

1 DEFENDANT. PLAINTIFF and the other Clinical Research Coordinators , are non-exempt
2 employees and are entitled to overtime compensation. Therefore, PLAINTIFF, and all the other
3 Clinical Research Coordinators should have been properly classified as non-exempt employees.

4 7. For DEFENDANT's business, the PLAINTIFF and other Clinical Research
5 Coordinators functioned as working members for DEFENDANT. As defined by
6 DEFENDANT's comprehensive corporate policies and procedures, the primary job duty of the
7 CALIFORNIA CLASS members employed by DEFENDANT was and is to perform day-to-day
8 routine and mundane data entry and filling out checklists in accordance with DEFENDANT's
9 established specific protocols and procedures which govern and control every important aspect
10 of the work performed by the Clinical Research Coordinators . These standardized procedures
11 mirror the realities of the workplace evidencing a uniformity of work among the Clinical
12 Research Coordinators and negated any exercise of independent judgment and discretion as to
13 any matter of significance.

14 8. The work schedule for the Clinical Research Coordinators was set by
15 DEFENDANT. From time to time PLAINTIFF and other Clinical Research Coordinators work
16 in excess of eight (8) hours in a workday and more than forty (40) hours in a workweek.

17 9. PLAINTIFF and the other Clinical Research Coordinators members were not
18 provided overtime compensation and other benefits required by law as a result of being
19 classified as "exempt" by DEFENDANT.

20 10. PLAINTIFF brings this Class Action on behalf of herself and a California class,
21 including any employees staffed with DEFENDANT by a third party, defined as all persons who
22 are or previously were employed by DEFENDANT in California as Clinical Research
23 Coordinators and were classified as exempt from overtime wages (the "CALIFORNIA
24 CLASS") at any time during the period beginning on the date four (4) years prior to the filing
25 of this complaint and ending on the date as determined by the Court (the "CALIFORNIA
26 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
27 CLASS Members is under five million dollars (\$5,000,000.00).

28 11. As a matter of company policy, practice, and procedure, DEFENDANT has

1 unlawfully, unfairly and/or deceptively classified every Clinical Research Coordinator as
2 exempt based on job title alone, failed to pay required overtime compensation and otherwise
3 failed to comply with all applicable labor laws with respect to these Clinical Research
4 Coordinators.

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

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

22 23 THE CONDUCT

24 14. The finite set of tasks required of the PLAINTIFF and the other Clinical Research
25 Coordinators as defined by DEFENDANT was executed by the PLAINTIFF and other Clinical
26 Research Coordinators through the performance of non-exempt data entry ad following
27 established checklists within a defined skill set.

28 15. Although the PLAINTIFF and the Clinical Research Coordinators other primarily

1 performed non-exempt labor, DEFENDANT instituted a blanket classification policy, practice
2 and procedure by which the PLAINTIFF and other Clinical Research Coordinators were
3 classified as exempt from overtime compensation and other related benefits. By reason of this
4 uniform exemption practice, policy and procedure applicable to the PLAINTIFF and the other
5 Clinical Research Coordinators who performed this non-exempt labor, DEFENDANT
6 committed acts of unfair competition in violation of the California Unfair Competition law, Cal.
7 Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy,
8 practice and procedure which failed to properly classify the PLAINTIFF and the other Clinical
9 Research Coordinators and thereby failed to pay them overtime wages for documented overtime
10 worked. The proper classification of these employees is DEFENDANT's legal burden. As a
11 result of DEFENDANT's intentional disregard of the obligation to meet this burden,
12 DEFENDANT failed to pay all required overtime compensation for work performed by the
13 PLAINTIFF and other Clinical Research Coordinators and violated the California Labor Code
14 and regulations promulgated thereunder as herein alleged. In addition, DEFENDANT failed to
15 provide all the legally required off-duty meal and rest breaks to the PLAINTIFF and the other
16 CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code.
17 DEFENDANT did not have a policy or practice which provided meal and rest breaks to the
18 PLAINTIFF and the other CALIFORNIA CLASS Members. As a result, DEFENDANT's
19 failure to provide the PLAINTIFF and the CALIFORNIA CLASS Members with legally
20 required meal and rest breaks is evidenced by DEFENDANT's business records which contain
21 no record of these breaks.

22 16. DEFENDANT, as a matter of law, have the burden of proving that (a) employees
23 were properly classified as exempt and that (b) DEFENDANT otherwise complied with
24 applicable laws. Other than the initial classification of the PLAINTIFF and the CALIFORNIA
25 CLASS members as exempt from being paid overtime based on job title alone, DEFENDANT
26 had no business policy, practice, or procedure to ensure that the PLAINTIFF and the
27 CALIFORNIA CLASS members were properly classified as exempt, and in fact, as a matter
28 of corporate policy erroneously and unilaterally classified the PLAINTIFF and the

1 CALIFORNIA CLASS members as exempt based on job title alone.

2 17. The PLAINTIFF and the CALIFORNIA CLASS members, primarily performed
3 non-exempt job duties during their employment with DEFENDANT, but were nevertheless
4 classified by DEFENDANT as exempt from overtime pay and from time to time worked more
5 than eight (8) hours a day and in excess of forty (40) hours a week.

6 18. PLAINTIFF and the CALIFORNIA CLASS members employed by
7 DEFENDANT were not primarily engaged in work of a type that was or now is directly related
8 to the management or general business operation of the employer's customers, when giving
9 these words a fair but narrow construction. PLAINTIFF and the CALIFORNIA CLASS
10 members employed by DEFENDANT were also not primarily engaged in work of a type that
11 was or now is performed at the level of the policy or management of DEFENDANT.
12 PLAINTIFF and the CALIFORNIA CLASS members employed by DEFENDANT were also
13 not primarily engaged in work requiring knowledge of an advanced type in a field or science
14 or learning customarily acquired by a prolonged course of specialized intellectual instruction
15 and study, but rather their work primarily involved the performance of routine mental, manual,
16 and/or physical processes. PLAINTIFF and the CALIFORNIA CLASS members employed by
17 DEFENDANT were also not primarily engaged in work that is predominantly intellectual and
18 varied in character, but rather was routine mental, manual, mechanical, and/or physical work
19 that was of such character that the output produced or the result accomplished could be
20 standardized in relation to a given period of time.

21 19. The fact that the work of PLAINTIFF and the CALIFORNIA CLASS members
22 may have involved work using a specialized skill set or technical abilities in a defined technical
23 area does not mean that the PLAINTIFF and the CALIFORNIA CLASS members employed
24 by DEFENDANT were exempt from overtime wages. Indeed, the exercise of discretion and
25 independent judgment must be more than the use of a highly technical skill set described in a
26 manual or other source. The work that the PLAINTIFF and the CALIFORNIA CLASS
27 members employed by DEFENDANT were primarily engaged in performing day-to-day
28 mundane and routine food handling which was work that was required to be performed as part

1 of the day-to-day-business of DEFENDANT. As a result, the PLAINTIFF and the other
2 CALIFORNIA CLASS members employed by DEFENDANT were primarily engaged in work
3 that was not directly related to the management policies or general business operations of
4 DEFENDANT and therefore should have been properly classified as non-exempt employees.

5 20. PLAINTIFF and the other CALIFORNIA CLASS members were classified as
6 exempt from California overtime and related laws by DEFENDANT, however, these employees
7 did not have managerial duties or authority. PLAINTIFF and the CALIFORNIA CLASS
8 members performed ongoing day-to-day non-exempt activities. Furthermore, the PLAINTIFF
9 and other CALIFORNIA CLASS members were tightly controlled by company policy and by
10 their managers, did not exercise discretion or independent judgment as to matters of
11 significance, and their job duties were not directly related to DEFENDANT's management
12 policies or general business operation.

13 21. PLAINTIFF and all other CALIFORNIA CLASS members are and were
14 uniformly classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
15 DEFENDANT failed to take the proper steps to determine whether the PLAINTIFF, and other
16 CALIFORNIA CLASS members, were properly classified under the applicable Industrial
17 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as
18 exempt from applicable California labor laws. Since DEFENDANT affirmatively and wilfully
19 misclassified the PLAINTIFF and other Clinical Research Coordinators in compliance with
20 California labor laws, DEFENDANT'S practices violated and continue to violate California
21 law. In addition, DEFENDANT acted deceptively by falsely and fraudulently telling the
22 PLAINTIFF and other Clinical Research Coordinators that they were exempt from overtime
23 pay when DEFENDANT knew or should have known that this statement was false and not
24 based on known facts. DEFENDANT also acted unfairly by violating the California labor laws,
25 and as a result of this policy and practice, DEFENDANT also violated the UCL. In doing so,
26 DEFENDANT cheated the competition by paying the CALIFORNIA CLASS less than the
27 amount competitors paid who complied with the law and cheated the CALIFORNIA CLASS
28 by not paying them in accordance with California law.

1 22. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
2 employees with an accurate itemized wage statement in writing showing, among other things,
3 gross wages earned and all applicable hourly rates, including overtime rates, in effect during the
4 pay period and the corresponding amount of time worked at each hourly rate. From time to
5 time, DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that
6 identified the correct gross and net wages earned. Aside from the violations listed above,
7 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
8 requirements under California Labor Code 226 *et seq.* As a result, from time to time
9 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS
10 with wage statements which violated Cal. Lab. Code § 226.

11 23. By reason of this uniform conduct applicable to the PLAINTIFF and all the
12 CALIFORNIA CLASS members, DEFENDANT committed acts of unfair competition in
13 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
14 (the "UCL"), by engaging in a company-wide policy and procedure which failed to correctly
15 classify the PLAINTIFF and the members of the CALIFORNIA CLASS as non-exempt. The
16 proper classification of these employees is DEFENDANT's burden. As a result of
17 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
18 failed to properly calculate and/or pay all required overtime compensation for work performed
19 by the members of the CALIFORNIA CLASS and violated the applicable Wage Order, the
20 California Labor Code and the regulations promulgated thereunder as herein alleged.

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

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

1 25. DEFENDANT from time to time fails to pay PLAINTIFF and members of the
2 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
3 period in accordance with Cal. Lab. Code § 204(d).

4 26. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
5 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal.
6 Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
7 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
8 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
9 to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

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

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

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

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

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

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

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

28 33. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and

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

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

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

15 36. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
16 Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-
17 2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf of
18 herself and other Aggrieved Employees as provided herein. Providing suitable seating is the
19 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation
20 to meet this burden, DEFENDANT violated the California Labor Code and regulations
21 promulgated thereunder as herein alleged. The amount in controversy for PLAINTIFF
22 individually does not exceed the sum or value of \$75,000.

23 24 **THE CALIFORNIA CLASS**

25 37. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
27 Action, pursuant to California Code of Civil Procedure Section 382, on behalf of a California
28 Class, defined as all persons who are or previously were employed by DEFENDANT in

1 California, including any employees staffed with DEFENDANT by a third party, as Clinical
2 Research Coordinators and were classified as exempt from overtime wages (the "CALIFORNIA
3 CLASS") at any time during the period beginning on the date four (4) years prior to the filing
4 of this complaint and ending on the date as determined by the Court (the "CALIFORNIA
5 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
6 CLASS Members is under five million dollars (\$5,000,000.00).

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

10 39. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
11 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
12 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
13 wilfully, engages in a practice whereby DEFENDANT unfairly, unlawfully, and deceptively
14 instituted a practice to ensure that the employees employed in a CM position are not properly
15 classified as non-exempt from the requirements of California Labor Code §§ 510, *et seq.*

16 40. DEFENDANT has the burden of proof to make sure that each and every employee
17 is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*
18 DEFENDANT, however, as a matter of uniform policy and procedure had in place during the
19 CALIFORNIA CLASS PERIOD and still has in place a policy and practice that misclassifies
20 the CALIFORNIA CLASS Members as exempt. DEFENDANT's uniform policy and practice
21 in place at all times during the CALIFORNIA CLASS PERIOD and currently in place is to
22 systematically classify each and every CALIFORNIA CLASS Member as exempt from the
23 requirements of the California Labor Code §§ 510, *et seq.* This common business practice
24 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
25 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
26 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

27 41. At no time during PLAINTIFF'S employment with DEFENDANT has any
28 Clinical Research Coordinator been reclassified as non-exempt from the applicable

1 requirements of California Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS
2 Member was initially, uniformly, and systematically classified as exempt upon being hired.

3 42. Any individual declarations of any employees offered at this time purporting to
4 indicate that one or more Clinical Research Coordinators may have been properly classified
5 is of no force or affect absent contemporaneous evidence that DEFENDANT's uniform system
6 did not misclassify PLAINTIFF and the other CALIFORNIA CLASS Members as exempt
7 pursuant to Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,
8 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the
9 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations,
10 PLAINTIFF and the CALIFORNIA CLASS Members are entitled to compel DEFENDANT
11 to provide restitutionary disgorgement of their ill-gotten gains into a fluid fund in order to
12 retribute these funds to PLAINTIFF and the CALIFORNIA CLASS Members according to
13 proof.

14 43. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 44. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
20 having in place company policies, practices and procedures that uniformly
21 misclassified PLAINTIFF and the members of the CALIFORNIA CLASS
22 as exempt;
- 23 (b) Committing an act of unfair competition in violation of the UCL, by
24 unlawfully, unfairly, and/or deceptively failing to have in place a company
25 policy, practice and procedure that accurately determines the amount of
26 working time spent by PLAINTIFF and the members of the
27 CALIFORNIA CLASS performing non-exempt labor;
- 28 (c) Committing an act of unfair competition in violation of the UCL, by

1 having in place a company policy, practice and procedure that fails to
2 reclassify as non-exempt those members of the CALIFORNIA CLASS
3 whose actual tasks were comprised of non-exempt job functions;

4 (d) Committing an act of unfair competition in violation of the UCL, by
5 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct
6 overtime pay to PLAINTIFF and the members of the CALIFORNIA
7 CLASS who are improperly classified as exempt, and retaining the unpaid
8 overtime to the benefit of DEFENDANT; and,

9 (e) Committing an act of unfair competition in violation of the UCL, by
10 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
11 the CALIFORNIA CLASS members.

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

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

17 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
18 raised in this Complaint are common to the CALIFORNIA CLASS will
19 apply uniformly to every member of the CALIFORNIA CLASS;

20 (c) The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
22 other members of the CALIFORNIA CLASS, was initially classified as
23 exempt upon hiring based on the defined corporate policies and practices
24 and labored under DEFENDANT's systematic procedure that fails to
25 properly classify as a non-exempt PLAINTIFF and the members of the
26 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
27 result of DEFENDANT's employment practices. PLAINTIFF and the
28 members of the CALIFORNIA CLASS were and are similarly or

1 identically harmed by the same unlawful, deceptive, unfair and pervasive
2 pattern of misconduct engaged in by DEFENDANT by deceptively
3 advising all Clinical Research Coordinators that they were exempt from
4 overtime wages based on the defined corporate policies and practices, and
5 unfairly failing to pay overtime to these employees who were improperly
6 classified as exempt; and,

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

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

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

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

1 protect their interests.

2 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
3 act on grounds generally applicable to the CALIFORNIA CLASS, making
4 appropriate class-wide relief with respect to the CALIFORNIA CLASS
5 as a whole in that DEFENDANT uniformly classified and treated the
6 Clinical Research Coordinators as exempt and, thereafter, uniformly failed
7 to take proper steps to determine whether the Clinical Research
8 Coordinators were properly classified as exempt, and thereby denied these
9 employees overtime wages as required by law;

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

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

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

1 prosecution of this litigation;

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

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

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

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

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

25 47. This Court should permit this Action to be maintained as a Class Action pursuant
26 to Cal. Code of Civ. Proc. § 382, because:

27 (a) The questions of law and fact common to the CALIFORNIA CLASS
28 predominate over any question affecting only individual CALIFORNIA

1 CLASS Members because DEFENDANT's employment practices were
2 uniform and systematically applied with respect to the CALIFORNIA
3 CLASS;

4 (b) A Class Action is superior to any other available method for the fair and
5 efficient adjudication of the claims of the members of the CALIFORNIA
6 CLASS because in the context of employment litigation a substantial
7 number of individual CALIFORNIA CLASS Members will avoid
8 asserting their rights individually out of fear of retaliation or adverse
9 impact on their employment;

10 (c) The members of the CALIFORNIA CLASS are so numerous that it is
11 impractical to bring all members of the CALIFORNIA CLASS before the
12 Court;

13 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
14 able to obtain effective and economic legal redress unless the action is
15 maintained as a Class Action;

16 (e) There is a community of interest in obtaining appropriate legal and
17 equitable relief for the acts of unfair competition, statutory violations and
18 other improprieties, and in obtaining adequate compensation for the
19 injuries which DEFENDANT's actions have inflicted upon the
20 CALIFORNIA CLASS;

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

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

27 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
28 the business records of DEFENDANT. The CALIFORNIA CLASS

1 consists of all DEFENDANT's Clinical Research Coordinators who were
2 classified as exempt and who were employed in California during the
3 CALIFORNIA CLASS PERIOD; and,

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

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

13 **THE CALIFORNIA LABOR SUB-CLASS**

14 49. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
15 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
16 CALIFORNIA CLASS who were employed by DEFENDANT in California (the
17 "CALIFORNIA LABOR SUB-CLASS"), including any employees staffed with DEFENDANT
18 by a third party, at any time during the period beginning on the date four (4) years prior to the
19 filing of this complaint and ending on the date as determined by the Court (the "CALIFORNIA
20 LABOR SUB-CLASS PERIOD") pursuant to California Code of Civil Procedure § 382. The
21 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
22 Members is under five million dollars (\$5,000,000.00).

23 50. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
24 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare
25 Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully, and
26 systematically misclassified the PLAINTIFF and the other members of the CALIFORNIA
27 CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime wages and
28

1 other labor laws based on DEFENDANT's comprehensive policies and procedures in order to
2 avoid the payment of overtime wages by misclassifying their positions as exempt from overtime
3 wages and other labor laws. To the extent equitable tolling operates to toll claims by the
4 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
5 SUB-CLASS PERIOD should be adjusted accordingly.

6 51. DEFENDANT maintains records from which the Court can ascertain and identify
7 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS
8 Members have been systematically, intentionally and uniformly misclassified as exempt as a
9 matter of DEFENDANT's corporate policies, practices and procedures. PLAINTIFF will seek
10 leave to amend the Complaint to include these additional job titles when they have been
11 identified.

12 52. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
13 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 16 (a) Whether DEFENDANT unlawfully fails to pay overtime compensation
17 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
18 the California Labor Code and California regulations and the applicable
19 California Wage Order;
- 20 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
21 non-exempt employees entitled to overtime compensation for overtime
22 worked under the overtime pay requirements of California law;
- 23 (c) Whether DEFENDANT's policy and practice of classifying the
24 CALIFORNIA LABOR SUB-CLASS Members as exempt from overtime
25 compensation and failing to pay the CALIFORNIA LABOR SUB-CLASS
26 Members overtime violate applicable provisions of California law;
- 27 (d) Whether DEFENDANT unlawfully fails to keep and furnish
28 CALIFORNIA LABOR SUB-CLASS Members with accurate records of

1 overtime worked; and,

2 (e) The proper measure of damages and penalties owed to the members of the
3 CALIFORNIA LABOR SUB-CLASS.

4 54. DEFENDANT, as a matter of corporate policy, practice and procedure,
5 erroneously classifies all Clinical Research Coordinators as exempt from overtime wages and
6 other labor laws. All Clinical Research Coordinators, including PLAINTIFF, perform the same
7 finite set of tasks and are paid by DEFENDANT according to uniform and systematic company
8 procedures, which, as alleged herein above, fails to correctly pay overtime compensation. This
9 business practice has been uniformly applied to each and every member of the CALIFORNIA
10 LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a
11 class-wide basis.

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

14 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
15 failing to pay PLAINTIFF and the members of the CALIFORNIA
16 LABOR SUB-CLASS the correct overtime pay for a workday longer than
17 eight (8) hours and/or a workweek longer than forty (40) hours for which
18 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

19 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
20 members of the CALIFORNIA LABOR SUB-CLASS who are improperly
21 classified as exempt with an accurate itemized statement in writing
22 showing the gross wages earned, the net wages earned, all applicable
23 hourly rates in effect during the pay period and the corresponding amount
24 of time worked at each hourly rate by the employee when these employees
25 worked overtime from time to time in a pay period;

26 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
27 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
28 legally required off-duty, uninterrupted thirty (30) minute meal breaks and

1 the legally required rest breaks;

- 2 (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
3 when an employee is discharged or quits from employment, the employer
4 must pay the employee all wages due without abatement, by failing to
5 tender full payment and/or restitution of wages owed or in the manner
6 required by California law to the members of the CALIFORNIA LABOR
7 SUB-CLASS who have terminated their employment; and,
8 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
9 the CALIFORNIA LABOR SUB-CLASS members with necessary
10 expenses incurred in the discharge of their job duties.

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

- 13 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
14 so numerous that the joinder of all such persons is impracticable and the
15 disposition of their claims as a class will benefit the parties and the Court;
16 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
17 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
18 CLASS and will apply uniformly to every member of the CALIFORNIA
19 LABOR SUB-CLASS;
20 (c) The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
22 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
23 was improperly classified as exempt and denied overtime pay as a result
24 of DEFENDANT's systematic classification practices. PLAINTIFF and
25 all the other members of the CALIFORNIA LABOR SUB-CLASS
26 sustained economic injuries arising from DEFENDANT's violations of
27 the laws of California; and,
28 (d) The representative PLAINTIFF will fairly and adequately represent and

1 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
2 retained counsel who are competent and experienced in Class Action
3 litigation. There are no material conflicts between the claims of the
4 representative PLAINTIFF and the members of the CALIFORNIA
5 LABOR SUB-CLASS that would make class certification inappropriate.
6 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
7 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

14 1) Inconsistent or varying adjudications with respect to individual
15 members of the CALIFORNIA LABOR SUB-CLASS which
16 would establish incompatible standards of conduct for the parties
17 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

23 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
24 or refused to act on grounds generally applicable to the CALIFORNIA
25 LABOR SUB-CLASS, making appropriate class-wide relief with respect
26 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
27 DEFENDANT uniformly classified and treated the Clinical Research
28 Coordinators as exempt and, thereafter, uniformly failed to take proper

1 steps to determine whether the Clinical Research Coordinators were
2 properly classified as exempt, and thereby denied these employees
3 overtime wages as required by law;

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

- 11 1) The interests of the members of the CALIFORNIA LABOR SUB-
12 CLASS in individually controlling the prosecution or defense of
13 separate actions in that the substantial expense of individual
14 actions will be avoided to recover the relatively small amount of
15 economic losses sustained by the individual CALIFORNIA
16 LABOR SUB-CLASS Members when compared to the substantial
17 expense and burden of individual prosecution of this litigation;
- 18 2) Class certification will obviate the need for unduly duplicative
19 litigation that would create the risk of:
 - 20 A. Inconsistent or varying adjudications with respect to
21 individual members of the CALIFORNIA LABOR SUB-
22 CLASS, which would establish incompatible standards of
23 conduct for DEFENDANT; and/or,
 - 24 B. Adjudications with respect to individual members of the
25 CALIFORNIA LABOR SUB-CLASS would as a practical
26 matter be dispositive of the interests of the other members
27 not parties to the adjudication or substantially impair or
28 impede their ability to protect their interests;

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

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

- 15 (a) The questions of law and fact common to the CALIFORNIA LABOR
16 SUB-CLASS predominate over any question affecting only individual
17 CALIFORNIA LABOR SUB-CLASS Members;
18 (b) A Class Action is superior to any other available method for the fair and
19 efficient adjudication of the claims of the members of the CALIFORNIA
20 LABOR SUB-CLASS because in the context of employment litigation a
21 substantial number of individual CALIFORNIA LABOR SUB-CLASS
22 Members will avoid asserting their rights individually out of fear of
23 retaliation or adverse impact on their employment;
24 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
25 numerous that it is impractical to bring all members of the CALIFORNIA
26 LABOR SUB-CLASS before the Court;
27 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
28 Members, will not be able to obtain effective and economic legal redress

1 unless the action is maintained as a Class Action;

2 (e) There is a community of interest in obtaining appropriate legal and
3 equitable relief for the acts of unfair competition, statutory violations and
4 other improprieties, and in obtaining adequate compensation for the
5 damages and injuries which DEFENDANT's actions have inflicted upon
6 the CALIFORNIA LABOR SUB-CLASS;

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

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

14 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
15 ascertainable from the business records of DEFENDANT. The
16 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
17 CLASS Members who were employed by DEFENDANT in California
18 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

19 (i) Class treatment provides manageable judicial treatment calculated to bring
20 a efficient and rapid conclusion to all litigation of all wage and hour
21 related claims arising out of the conduct of DEFENDANT.

22 **JURISDICTION AND VENUE**

23 59. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc §
24 410.10 and Cal. Business & Professions Code § 17203. This action is brought as a Class Action
25 on behalf of similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc.
26 § 382.

27 60. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and

1 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
2 in this County and/or conducts substantial business in this County, and (ii) committed the
3 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS
4 and CALIFORNIA LABOR SUB-CLASS.

5
6 **FIRST CAUSE OF ACTION**

7 **For Unlawful Business Practices**

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

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

10 61. PLAINTIFF, and the other members of the CALIFORNIA CLASS, realleges and
11 incorporates by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 62. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
14 Code § 17021.

15 63. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
16 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
17 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
18 competition as follows:

19 Any person who engages, has engaged, or proposes to engage in unfair
20 competition may be enjoined in any court of competent jurisdiction. The court
21 may make such orders or judgments, including the appointment of a receiver,
22 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
may be necessary to restore to any person in interest any money or property, real
or personal, which may have been acquired by means of such unfair
competition.

23 California Business & Professions Code § 17203.

24 64. By the conduct alleged herein, DEFENDANT has engaged and continues to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Wage Order(s), the California Code of Regulations, and the California Labor Code
27 Sections 204, 210, 226.7, 510, 512, 1194, 1198, 2802 and the Fair Labor Standards Act and
28 federal regulations promulgated thereunder and for which this Court should issue declaratory

1 and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to
2 prevent and remedy the conduct held to constitute unfair competition, including restitution of
3 wages wrongfully withheld.

4 65. By the conduct alleged herein, DEFENDANT's practices are unlawful and unfair
5 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous
6 or substantially injurious to employees, and are without valid justification or utility for which
7 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
8 California Business & Professions Code, including restitution of wages wrongfully withheld.

9 66. By the conduct alleged herein, DEFENDANT's practices are deceptive and
10 fraudulent in that DEFENDANT's uniform policy and practice is to represent to PLAINTIFF
11 and other CALIFORNIA CLASS Members that they are exempt from overtime pay when in
12 fact these representations are false and likely to deceive, for which this Court should issue
13 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution
14 of wages wrongfully withheld.

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

19 68. By the conduct alleged herein, DEFENDANT's practices are also unfair and
20 deceptive in that DEFENDANT's uniform policies, practices and procedures fail to provide
21 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

22 69. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
23 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
24 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
25 for each workday in which a second off-duty meal period was not timely provided for each ten
26 (10) hours of work.

27 70. PLAINTIFF further demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty

1 paid rest period was not timely provided as required by law.

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

8 72. All the acts described herein as violations of, among other things, the California
9 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,
10 are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and
11 unscrupulous, and are likely to deceive employees, as herein alleged, and thereby constitute
12 deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§
13 17200, *et seq.*

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

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

23 75. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
24 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
25 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
26 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
27 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
28 irreparable legal and economic harm unless DEFENDANT are restrained from continuing to

engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, 1194 and 1198]

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

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

77. Cal. Lab. Code § 510 states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

78. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

79. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to work more than six days in seven."

80. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

81. Cal. Lab. Code § 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

82. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard

1 conditions of labor fixed by the commission shall be the maximum hours of work and the
2 standard conditions of labor for employees. The employment of any employee for longer hours
3 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

4 83. DEFENDANT has intentionally and uniformly designated certain employees as
5 "exempt" employees, by their job title alone and without regard to DEFENDANT's realistic
6 expectations and actual overall requirements of the job, including PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS who work on the production and non-
8 managerial side of DEFENDANT's business. This is done in an illegal attempt to avoid
9 payment of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial
10 Welfare Commission requirements.

11 84. For an employee to be exempt as a bona fide "executive," all the following criteria
12 must be met and DEFENDANT has the burden of proving that:

- 13 (a) The employee's primary duty must be management of the enterprise, or of a
14 customarily recognized department or subdivision; and,
- 15 (b) The employee must customarily and regularly direct the work of at least two (2)
16 or more other employees; and,
- 17 (c) The employee must have the authority to hire and fire, or to command
18 particularly serious attention to his or her recommendations on such actions
19 affecting other employees; and,
- 20 (d) The employee must customarily and regularly exercise discretion and
21 independent judgment; and,
- 22 (e) The employee must be primarily engaged in duties which meet the test of
23 exemption.

24 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they
25 all fail to meet the requirements of being an "executive" within the meaning of the applicable
26 Wage Order.

27 85. For an employee to be exempt as a bona fide "administrator," all of the following
28 criteria must be met and DEFENDANT has the burden of proving that:

- (a) The employee must perform office or non-manual work directly related to management policies or general business operation of the employer; and,
- (b) The employee must customarily and regularly exercise discretion and independent judgment; and,
- (c) The employee must regularly and directly assist a proprietor or an exempt administrator; or,
- (d) The employee must perform, under only general supervision, work requiring special training, experience, or knowledge; or,
- (e) The employee must execute special assignments and tasks under only general supervision; and,
- (f) The employee must be primarily engaged in duties which meet the test of exemption.

No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because they all fail to meet the requirements for being an "administrator" under the applicable Wage Order.

86. The Industrial Welfare Commission, in Wage Order 4-2001, at section (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied with to place an employee in the "professional" exempt category. For an employee to be exempt as a bona fide "professional," all the following criteria must be met and DEFENDANT has the burden of proving that:

- (a) The employee is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:
 - 1) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the

1 performance of routine mental, manual, or physical processes, or work
2 that is an essential part or necessarily incident to any of the above work;
3 or,

4 2) Work that is original and creative in character in a recognized field of
5 artistic endeavor, and the result of which depends primarily on the
6 invention, imagination or talent of the employee or work that is an
7 essential part of or incident to any of the above work; and,

8 3) Whose work is predominately intellectual and varied in character (as
9 opposed to routine mental, manual, mechanical, or physical work) and is
10 of such character cannot be standardized in relation to a given period of
11 time.

12 (b) The employee must customarily and regularly exercise discretion and
13 independent judgment; and,

14 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
15 state minimum wage for full-time employment.

16 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they
17 all fail to meet the requirements of being a "professional" within the meaning of the applicable
18 Wage Order.

19 87. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
20 do not fit the definition of an exempt executive, administrative, or professional employee
21 because:

22 (a) They did not work as executives or administrators; and,

23 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other
24 members of the CALIFORNIA LABOR SUB-CLASS because they did not meet
25 all the applicable requirements to work under the professional exemption for the
26 reasons set forth above in this Complaint.

27 88. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF, and the
28 other members of the CALIFORNIA LABOR SUB-CLASS, from time to time worked more

1 than eight (8) hours in a workday and/or more than forty (40) hours in a workweek.

2 89. DEFENDANT fails to pay PLAINTIFF, and the other members of the
3 CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they worked in
4 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and
5 1198, even though PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
6 CLASS, are required, permitted or suffered by DEFENDANT to work, and do in fact work,
7 overtime.

8 90. By virtue of DEFENDANT's unlawful failure to pay additional compensation
9 to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for their
10 overtime work, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
11 CLASS, have suffered, and will continue to suffer, an economic injury in amounts which are
12 presently unknown to them and which will be ascertained according to proof at trial.

13 91. DEFENDANT knew or should have known that PLAINTIFF, and the other
14 members of the CALIFORNIA LABOR SUB-CLASS, are misclassified as exempt and
15 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, not to pay
16 them for their overtime labor as a matter of uniform corporate policy, practice and procedure.

17 92. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR
18 SUB-CLASS, request recovery of overtime compensation according to proof, interest, costs,
19 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
20 by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation is determined
21 to be owed to members of the CALIFORNIA LABOR SUB-CLASS who have terminated their
22 employment, DEFENDANT's conduct also violates Labor Code § 201 and/or 202, and
23 therefore these individuals are also to be entitled to waiting time penalties under Cal. Lab. Code
24 § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-
25 CLASS Members. Further, PLAINTIFF, and the other members of the CALIFORNIA LABOR
26 SUB-CLASS, are entitled to seek and recover statutory costs.

27 93. In performing the acts and practices herein alleged in violation of labor laws and
28 refusing to provide the requisite overtime compensation, DEFENDANT acted and continues

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

7
8 **THIRD CAUSE OF ACTION**

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

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

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

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

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

1 practice.

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

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

11 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee

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

11 104. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
12 employees with an accurate itemized wage statement in writing showing, among other things,
13 gross wages earned and all applicable hourly rates, including overtime rates, in effect during
14 the pay period and the corresponding amount of time worked at each hourly rate. From time
15 to time, DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that
16 identified the correct gross and net wages earned. Aside from the violations listed above,
17 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
18 requirements under California Labor Code 226 *et seq.* As a result, from time to time
19 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA LABOR
20 SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

21 105. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
22 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
23 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
24 true time worked and the amount of employment taxes which were not properly paid to state
25 and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF,
26 and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover
27 liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and
28 \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an

1 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
2 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

3 **SIXTH CAUSE OF ACTION**

4 **For Failure to Pay Sick Pay Wages**

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

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

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

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

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

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

7
8 109. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
9 during each calendar month and are to be paid no later than the payday for the next regular
10 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
11 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid no
12 later than the payday for the next regular payroll period after accrued sick leave is used as paid
13 sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
14 employee, wages earned and unpaid at the time of discharge are due and payable immediately.
15 Cal. Lab. Code § 202 provides that an employee is entitled to receive all unpaid wages no later
16 than 72 hours after an employee quits his or her employment, unless the employee has given 72-
17 hour notice of his or her intention to quit, in which case the employee is entitled to his or her
18 wages at the time of quitting. The Labor Code penalizes untimely payments. For example, Cal.
19 Lab. Code § 203 provides that if an employer willfully fails to pay wages owed in accordance
20 with Cal. Lab. Code §§ 201-202, then the wages of the employee shall continue as a penalty
21 from the due date, and at the same rate until paid, but the wages shall not continue for more than
22 thirty (30) days. Likewise, Cal. Lab. Code § 210 provides penalties for violations of Cal. Lab.
23 Code § 204 and untimely payments during employment. Under Cal. Lab. Code §§ 203, 210 and
24 218, employees may sue to recover applicable penalties.

25 110. As alleged herein and as a matter of policy and practice, DEFENDANT
26 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
27 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages.
28 As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other
Labor Code provisions. PLAINTIFF is informed and believes that DEFENDANT was advised

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

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

13 14 **SEVENTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 2802]**

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

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

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

23 An employer shall indemnify his or her employee for all necessary expenditures
24 or losses incurred by the employee in direct consequence of the discharge of his
25 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.

26 114. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
27 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
28 members for required expenses incurred in the discharge of their job duties for DEFENDANT's

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

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

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

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

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

5 118. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges
6 an employee, the wages earned and unpaid at the time of discharge are due and payable
7 immediately."

8 119. Cal. Lab. Code § 202 provides, in relevant part, that:

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

15 120. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
16 CLASS Members' employment contract.

17 121. Cal. Lab. Code § 203 provides, in relevant part, that:

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

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

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

28 123. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the

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

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

- 11 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
12 CLASS as a Class Action pursuant to California Code of Civil Procedure § 382;
13 B) An order requiring DEFENDANT to correctly calculate and pay all overtime
14 wages and all sums unlawfully withheld from compensation due to PLAINTIFF
15 and the other members of the CALIFORNIA CLASS;
16 C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
17 for restitution of the sums incidental to DEFENDANT's violations due to the
18 PLAINTIFF and to the other members of the CALIFORNIA CLASS according
19 to proof; and,
20 D) An order temporarily, preliminarily, and permanently enjoining and restraining
21 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

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

- 23 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
24 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS
25 as a Class Action pursuant to California Code of Civil Procedure § 382;
26 B) Compensatory damages, according to proof at trial, including compensatory
27 damages for minimum, overtime and sick pay compensation due PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS, during the

1 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
2 at the statutory rate;

3 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
4 in which a violation occurs and one hundred dollars (\$100) per each member of
5 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
6 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
7 an award of costs for violation of Cal. Lab. Code § 226;

8 D) Meal and rest period compensation pursuant to California Labor Code Section
9 226.7 and the applicable IWC Wage Order; and,

10 E) The wages of all terminated employees from the CALIFORNIA LABOR
11 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
12 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203

13 3. On all claims:

14 A) An award of interest, including prejudgment interest at the legal rate;

15 B) Such other and further relief as the Court deems just and equitable; and,

16 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
17 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
18 §2802.

19
20 Dated: July 13, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
21

22 By: _____

23 Norman B. Blumenthal
24 Kyle R. Nordrehaug
25 Nicholas J. De Blouw

26 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

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

Dated: July 13, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiff