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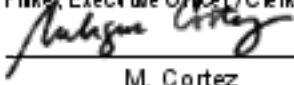
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County of Alameda

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By:  Deputy

M. Cortez

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

ROBIN KONG, an individual, on behalf of
herself and on behalf of all persons similarly
situated, and on behalf of the State of
California, as private attorney general,

Plaintiff,

vs.

MANOS HOME CARE, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 24CV091691

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT provides health services in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from October of 2022
11 to August of 2024. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California,
16 including any employees staffed with DEFENDANT by a third party, and classified as non-
17 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning on
18 September 17, 2020 and ending on the date as determined by the Court (the “CALIFORNIA
19 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
20 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

22 23 **THE CONDUCT**

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
25 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
26 worked, meaning the time during which an employee is subject to the control of an
27 employer, including all the time the employee is suffered or permitted to work.

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

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

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

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

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

20 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
21 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
22 actual amount of time these employees worked. Pursuant to the Industrial Welfare
23 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
24 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
25 employee was subject to the control of an employer, including all the time the employee was
26 permitted or suffered to permit this work. DEFENDANT required these employees to work
27 off the clock without paying them for all the time they were under DEFENDANT's control.
28 As such, DEFENDANT knew or should have known that PLAINTIFF and the other

1 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
2 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
3 working without their time being accurately recorded and without compensation at the
4 applicable minimum wage and overtime wage rates. To the extent that the time worked off
5 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
6 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
7 1197, and 1197.1.

8 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
9 other members of the CALIFORNIA CLASS with complete and accurate wage statements
10 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
11 Code § 226 provides that every employer shall furnish each of his or her employees with an
12 accurate itemized wage statement in writing showing, among other things, gross wages
13 earned and all applicable hourly rates in effect during the pay period and the corresponding
14 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
15 Members were paid on an hourly basis. As such, the wage statements should reflect all
16 applicable hourly rates during the pay period and the total hours worked, and the applicable
17 pay period in which the wages were earned pursuant to California Labor Code Section
18 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
19 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
20 wage statements failed to identify the accurate total hours worked each pay period. When
21 the hours shown on the wage statements were added up, they did not equal the actual total
22 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
23 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
24 an itemized wage statement that lists all the requirements under California Labor Code 226.
25 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members
26 of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.
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1 15. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
2 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
3 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
4 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
5 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
6 Members at their base rates of pay.

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

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

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

24 19. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
25 to collect or receive from an employee any part of wages theretofore paid by said employer
26 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
27 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
28 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,

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

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

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

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

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

10 **JURISDICTION AND VENUE**

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

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

21 **THE CALIFORNIA CLASS**

22 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
23 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, (the "UCL") as
24 a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,
25 defined as all individuals who are or previously were employed by DEFENDANT in
26 California, including any employees staffed with DEFENDANT by a third party, and
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1 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
2 period beginning on September 17, 2020 and ending on the date as determined by the Court
3 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate
4 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

24 3. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
25 CLASS Members is impracticable.

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

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

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

1 members of the CALIFORNIA CLASS were and are similarly or
2 identically harmed by the same unlawful, deceptive and unfair
3 misconduct engaged in by DEFENDANT; and,

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

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

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

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

- 27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
28 to act on grounds generally applicable to the CALIFORNIA CLASS,

1 making appropriate class-wide relief with respect to the CALIFORNIA
2 CLASS as a whole in that DEFENDANT failed to pay all wages due to
3 members of the CALIFORNIA CLASS as required by law;

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

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

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

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

27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA CLASS, which

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

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

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

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

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

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

27 (b) A Class Action is superior to any other available method for the fair
28 and efficient adjudication of the claims of the members of the

1 CALIFORNIA CLASS because in the context of employment litigation
2 a substantial number of individual CALIFORNIA CLASS Members
3 will avoid asserting their rights individually out of fear of retaliation or
4 adverse impact on their employment;

5 (c) The members of the CALIFORNIA CLASS are so numerous that it is
6 impractical to bring all members of the CALIFORNIA CLASS before
7 the Court;

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

11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the acts of unfair competition, statutory violations
13 and other improprieties, and in obtaining adequate compensation for
14 the damages and injuries which DEFENDANT's actions have inflicted
15 upon the CALIFORNIA CLASS;

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

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

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

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

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

6
7 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

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

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

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

3 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1, by failing to
4 accurately pay PLAINTIFF and the members of the CALIFORNIA
5 LABOR SUB-CLASS the correct minimum wage pay for which
6 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

7 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
8 the members of the CALIFORNIA LABOR SUB-CLASS with an
9 accurate itemized statement in writing showing the corresponding
10 correct amount of wages earned by the employee;

11 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
12 PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS with all legally required off-duty, uninterrupted thirty
14 (30) minute meal breaks and the legally required off-duty rest breaks;

15 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
16 when an employee is discharged or quits from employment, the
17 employer must pay the employee all wages due without abatement, by
18 failing to tender full payment and/or restitution of wages owed or in the
19 manner required by California law to the members of the
20 CALIFORNIA LABOR SUB-CLASS who have terminated their
21 employment; and,

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

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

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

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

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

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

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution
3 of separate actions by individual members of the CALIFORNIA
4 LABOR SUB-CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which
7 would establish incompatible standards of conduct for the
8 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
9 2) Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a
11 practical matter be dispositive of interests of the other members
12 not party to the adjudication or substantially impair or impede
13 their ability to protect their interests.
- 14 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
15 acted or refused to act on grounds generally applicable to the
16 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
17 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
18 whole in that DEFENDANT fails to pay all wages due. Including the
19 correct wages for all time worked by the members of the
20 CALIFORNIA LABOR SUB-CLASS as required by law;
- 21 (c) Common questions of law and fact predominate as to the members of
22 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
23 and violations of California Law as listed above, and predominate over
24 any question affecting only individual CALIFORNIA LABOR SUB-
25 CLASS Members, and a Class Action is superior to other available
26 methods for the fair and efficient adjudication of the controversy,
27 including consideration of:
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- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class

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

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

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

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

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

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

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

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

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

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

11 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

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

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

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

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

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

24 50. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
25 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
26 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
27 including overtime work.
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1 51. DEFENDANT's unlawful wage and hour practices manifested, without
2 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
3 implementing a policy and practice that failed to accurately record overtime worked by
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
5 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
6 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
7 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
8 workweek.

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

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

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

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

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

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

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

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

13
14 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

20 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

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

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

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

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

17
18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

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

25 ///

26 ///

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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)**

76. 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.

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

As used in this article:

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

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

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

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

If an employee not having a written contract for a definite period quits his or 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 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 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

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

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

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

1 employee who is discharged or who quits, the wages of the employee shall
2 continue as a penalty from the due date thereof at the same rate until paid
or until an action therefor is commenced; but the wages shall not continue
for more than 30 days.

3 108. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
4 CLASS Members has terminated and DEFENDANT has not tendered payment of all
5 wages owed as required by law. Additionally, at all times during the term of
6 PLAINTIFF's employment with DEFENDANT, PLAINTIFF and CALIFORNIA
7 LABOR SUB-CLASS Members earned and accrued vested vacation and holiday time
8 on the date of their termination pursuant to DEFENDANT's uniform vacation policies
9 and applicable California law. The amount of vacation pay PLAINTIFF and the other
10 CALIFORNIA LABOR SUB-CLASS Members earned and accumulated is evidenced
11 by DEFENDANT's business records. Additionally, DEFENDANT also underpaid
12 accrued vested vacation wages to PLAINTIFF and other CALIFORNIA LABOR SUB-
13 CLASS MEMBERS by failing to pay such wages at the regular rate of pay and more
14 specifically the final rate of pay that included all non-discretionary incentive
15 compensation. Rather than pay vacation wages at the regular rate of pay,
16 DEFENDANT underpaid vacation wages to PLAINTIFF and other CALIFORNIA
17 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
18 PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
19 incentive compensation into the vacation wage payment calculations. DEFENDANT
20 failed to specify in DEFENDANT's written vacation policy the rate at which
21 PLAINTIFF and other CALIFORNIA LABOR CLASS Members would be paid
22 vacation upon leaving employment with DEFENDANT. As a result of DEFENDANT's
23 unlawful practice, policy and procedure to deny paying the PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS all of their vested vacation and
25 holiday time, DEFENDANT failed to pay the PLAINTIFF and the members of the
26 CALIFORNIA LABOR SUB-CLASS all vested vacation time as wages due upon
27 employment termination, in violation of the California Labor Code, Sections 201, 202,
28

203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of including all of PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary compensation into the waiting time penalty calculations. This failure by DEFENDANT is believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for earned, accrued and vested vacation and holiday time, as well as the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive practice to the detriment of the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS . DEFENDANT's uniform practice and policy of failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday time accumulated at employment termination violated and continues to violate Section 227.3 of the California Labor Code.

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

NINTH CAUSE OF ACTION

For Failure to Pay Sick Pay Wages

[Cal. Lab. Code §§ 201-203, 233, 246]

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

110. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-

1 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
2 paragraphs of this Complaint.

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

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

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

15 114. As alleged herein and as a matter of policy and practice, DEFENDANT
16 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
17 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
18 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246,
19 among other Labor Code provisions. PLAINTIFF is informed and believes that
20 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
21 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
22 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
23 include those benefits to which an employee is entitled as a part of his or her compensation,
24 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
25 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
26 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
27 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
28 penalties.

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

TENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFF and Against All Defendants)

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

117. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

118. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT, in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”)

1 during the time period of July 9, 2023 until a date as determined by the Court (the "PAGA
2 PERIOD").

3 119. On July 9, 2024, PLAINTIFF gave written notice by electronic mail to the
4 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
5 employer of the specific provisions of this code alleged to have been violated as required by
6 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
7 herein (PAGA Notice only without draft complaint). The statutory waiting period for
8 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
9 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
10 pursuant to Section 2699 as the proxy of the State of California with respect to all
11 AGGRIEVED EMPLOYEES as herein defined.

12 120. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
15 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
16 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
17 required expenses, and (f) failed to provide wages when due, all in violation of the
18 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 et seq., 210, 221,
19 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
20 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
21 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
22 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
23 General Act of 2004 as the representative of the State of California for the illegal conduct
24 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

25 121. All of the conduct and violations alleged herein occurred during the PAGA
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
27 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
28

1 that affected the AGGRIEVED EMPLOYEES pursuant to Carrington v. Starbucks Corp.
2 2018 AJDAR 12157 (Certified for Publication 12/19/18).

3
4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the CALIFORNIA CLASS:

- 9 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
10 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
11 B) An order temporarily, preliminarily and permanently enjoining and restraining
12 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
13 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
14 withheld from compensation due to PLAINTIFF and the other members of the
15 CALIFORNIA CLASS; and,
16 D) 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
18 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 20 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
21 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
22 action pursuant to Cal. Code of Civ. Proc. § 382;
23 B) Compensatory damages, according to proof at trial, including compensatory
24 damages for minimum and overtime compensation due PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
26 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
27 statutory rate;
28

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

16 3. On behalf of the State of California and with respect to all AGGRIEVED
17 EMPLOYEES:

- 18 A) Recovery of civil penalties as prescribed by the Labor Code Private
19 Attorneys General Act of 2004; and,
- 20 B) An award of attorneys' fees and cost of suit, as allowable under the
21 law, including, but not limited to, pursuant to Labor Code §2699.

22 4. On all claims:

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

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Dated: April 28, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

DEMAND FOR A JURY TRIAL

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

Dated: April 28, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

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

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EXHIBIT #1

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1004**

**July 9, 2024
CA3364**

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

**Labor and Workforce Development Agency
Online Filing**

**Manos Home Care, Inc.
Certified Mail #9589071052701151772713
Alex Mountford
4173 MACARTHUR BLVD.
OAKLAND, CA 94619**

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Manos Home Care, Inc. in California, including any employees staffed with Manos Home Care, Inc. by a third party, and classified as non-exempt employees during the time period of July 9, 2023 until a date as determined by the Court. Our offices represent Plaintiff Robin Kong (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Manos Home Care, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California since October of 2022. Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully fails to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendants required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods.

See Vaquero v. Stoneledge Furniture, LLC, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendants provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees performed 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. Defendants 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, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

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