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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ANA VASILIC and SELVIN UMANZOR,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated, and on
behalf of the State of California, as private
attorneys general,

Plaintiffs,

vs.

SIMCO RESTAURANTS, INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-24-616018

**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

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

01/28/2025

Clerk of the Court

BY: SAHAR ENAYATI

Deputy Clerk

1 Ana Vasilic and Selvin Umanzor (“PLAINTIFFS”), individuals, on behalf of themselves
2 and all other similarly situated current and former employees allege on information and belief,
3 except for her own acts and knowledge which are based on personal knowledge, the following.
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5
6 **THE PARTIES**
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8 1. Simco Restaurants, Inc. (“DEFENDANT”) is a corporation that at all relevant
9 times mentioned herein conducted and continues to conduct substantial business in California.

10 2. DEFENDANT owns and operates restaurants in California.

11 3. PLAINTIFF Ana Vasilic was employed by DEFENDANT in California from
12 January of 2023 to December of 2023. PLAINTIFF was at all times classified by
13 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
14 required meal and rest periods and payment of minimum and overtime wages due for all time
15 worked.
16

17 4. PLAINTIFF Selvin Umanzor was employed by DEFENDANT in California from
18 May of 2021 to present. PLAINTIFF was at all times classified by DEFENDANT as a
19 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
20 periods and payment of minimum and overtime wages due for all time worked.
21

22 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
23 class, defined as all individuals who are or previously were employed by DEFENDANT in
24 California, including any employees staffed with DEFENDANT by a third party, and classified
25 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
26 beginning four (4) years prior to the filing of the initial Complaint and ending on the date as
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1 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
2 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
3 (\$5,000,000.00).
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5 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
6 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
7 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's
8 policy and practice which failed to lawfully compensate these employees. DEFENDANT's
9 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
10 whereby DEFENDANT retained and continues to retain wages due to PLAINTIFFS and the
11 other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
12 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
13 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA
14 CLASS who have been economically injured by DEFENDANT's past and current unlawful
15 conduct, and all other appropriate legal and equitable relief.
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19 7. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
21 presently unknown to PLAINTIFFS who therefore sues these Defendants by such fictitious
22 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
23 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
24 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
25 information and belief alleges, that the Defendants named in this Complaint, including
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DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

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

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT require PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company

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

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

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

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

1 meal period times to avoid paying penalties to PLAINTIFFS and other CALIFORNIA
2 CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS
3 therefore forfeit meal breaks without additional compensation and in accordance with
4 DEFENDANT's corporate policy and practice.
5

6 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
7 CALIFORNIA CLASS Members were also required from time to time to work in excess of
8 four (4) hours without being provided ten (10) minute rest periods. Further, these
9 employees were denied their first rest periods of at least ten (10) minutes for some shifts
10 worked of at least two (2) to four (4) hours from time to time, a first and second rest period
11 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours
12 from time to time, and a first, second and third rest period of at least ten (10) minutes for
13 some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other
14 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu
15 thereof. Additionally, the applicable California Wage Order requires employers to provide
16 employees with off-duty rest periods, which the California Supreme Court defined as time
17 during which an employee is relieved from all work related duties and free from employer
18 control. In so doing, the Court held that the requirement under California law that
19 employers authorize and permit all employees to take rest period means that employers must
20 relieve employees of all duties and relinquish control over how employees spend their time
21 which includes control over the locations where employees may take their rest period.
22 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
23 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and
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1 other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on
2 DEFENDANT's rule which states PLAINTIFFS and other CALIFORNIA CLASS
3 Members cannot leave the work premises during their rest period.
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5 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
6 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
7 actual amount of time these employees worked. Pursuant to the Industrial Welfare
8 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and other
9 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
10 employee was subject to the control of an employer, including all the time the employee was
11 permitted or suffered to permit this work. DEFENDANT required these employees to work
12 off the clock without paying them for all the time they were under DEFENDANT's control.
13
14 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
15 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
16 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by
17 working without their time being accurately recorded and without compensation at the
18 applicable minimum wage and overtime wage rates. To the extent that the time worked off
19 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
20 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
21 1197, and 1197.1.
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25 15. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
26 other members of the CALIFORNIA CLASS with complete and accurate wage statements
27 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
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1 Code § 226 provides that every employer shall furnish each of his or her employees with an
2 accurate itemized wage statement in writing showing, among other things, gross wages
3 earned and all applicable hourly rates in effect during the pay period and the corresponding
4 amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA CLASS
5 Members were paid on an hourly basis. As such, the wage statements should reflect all
6 applicable hourly rates during the pay period and the total hours worked, and the applicable
7 pay period in which the wages were earned pursuant to California Labor Code Section
8 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and other
9 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
10 wage statements failed to identify the accurate total hours worked each pay period. When
11 the hours shown on the wage statements were added up, they did not equal the actual total
12 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
13 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS
14 an itemized wage statement that lists all the requirements under California Labor Code 226.
15 As a result, DEFENDANT from time to time provided PLAINTIFFS and the other members
16 of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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19 16. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
20 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
21 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
22 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
23 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA
24 CLASS Members at their base rates of pay.

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

6 18. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
7 at the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely
8 earned non-discretionary incentive wages which increased their regular rate of pay.
9 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and
10 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of
11 pay, as required under Cal. Lab. Code Section 246.
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14 19. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS
15 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
16 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are
17 informed and believe and based thereon allege that such failure to pay sick pay at regular
18 rate was willful, such that PLAINTIFFS and members of the CALIFORNIA CLASS whose
19 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
20 Sections 201-203.
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23 20. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
24 to collect or receive from an employee any part of wages theretofore paid by said employer
25 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and
26 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
27 compensation payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
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1 Members, failed to disclose all aspects of the deductions from compensation payable to
2 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to
3 pay these employees all wages due at each applicable pay period and upon termination.
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5 PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of
6 all illegal deductions from wages according to proof, related penalties, interest, attorney fees
7 and costs.

8
9 21. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
10 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business
11 expenses incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct
12 consequence of discharging their duties on behalf of DEFENDANT. Under California
13 Labor Code Section 2802, employers are required to indemnify employees for all expenses
14 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
15 states that "an employer shall indemnify his or her employee for all necessary expenditures
16 or losses incurred by the employee in direct consequence of the discharge of his or her
17 duties, or of his or her obedience to the directions of the employer, even though unlawful,
18 unless the employee, at the time of obeying the directions, believed them to be unlawful."
19

20
21 22. In the course of their employment PLAINTIFFS and other CALIFORNIA
22 CLASS Members as a business expense, were required by DEFENDANT to use their own
23 personal cellular phones as a result of and in furtherance of their job duties as employees for
24 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
25 associated with the use of their personal cellular phones for DEFENDANT's benefit.
26
27 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
28

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

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

23 24. This Court has jurisdiction over this Action pursuant to California Code of
24 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
25 17203. This action is brought as a Class Action on behalf of PLAINTIFFS and similarly
26 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.
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1 25. Venue is proper in this Court pursuant to California Code of Civil Procedure,
2 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT
3 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and
4 facilities in this County and/or conducts substantial business in this County, and (ii)
5 committed the wrongful conduct herein alleged in this County against members of the
6 CALIFORNIA CLASS.
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8
9 **THE CALIFORNIA CLASS**

10 26. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
11 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, (the "UCL") as
12 a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,
13 defined as all individuals who are or previously were employed by DEFENDANT in
14 California, including any employees staffed with DEFENDANT by a third party, and
15 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
16 period beginning four (4) years prior to the filing of the initial Complaint and ending on the
17 date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
18 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
19 million dollars (\$5,000,000.00).
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23 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA
24 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
25 accordingly.
26

27 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage

1 Order requirements, and the applicable provisions of California law, intentionally,
2 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
3 meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members,
4 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
5 this work and permits or suffers to permit this work.
6

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

17 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.
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20 31. DEFENDANT violated the rights of the CALIFORNIA CLASS under
21 California law by:
22

- 23 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
24 Prof. Code §§ 17200, (the "UCL"), by unlawfully, unfairly and/or
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deceptively having in place company policies, practices and procedures

1 that failed to record and pay PLAINTIFFS and the other members of
2 the CALIFORNIA CLASS for all time worked, including minimum
3 wages owed and overtime wages owed for work performed by these
4 employees; and,

- 5
6 (b) Committing an act of unfair competition in violation of the UCL, by
7 failing to provide the PLAINTIFFS and the other members of the
8 CALIFORNIA CLASS with the legally required meal and rest periods.
9

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

- 13 (a) The persons who comprise the CALIFORNIA CLASS are so
14 numerous that the joinder of all such persons is impracticable and the
15 disposition of their claims as a class will benefit the parties and the
16 Court;
17

- 18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
19 issues that are raised in this Complaint are common to the
20 CALIFORNIA CLASS will apply to every member of the
21 CALIFORNIA CLASS;
22

- 23 (c) The claims of the representative PLAINTIFFS are typical of the claims
24 of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all
25 the other members of the CALIFORNIA CLASS, were classified as
26 non-exempt employees paid on an hourly basis who were subjected to
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1 the DEFENDANT's deceptive practice and policy which failed to
2 provide the legally required meal and rest periods to the CALIFORNIA
3 CLASS and thereby underpaid compensation to PLAINTIFFS and
4 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
5 result of DEFENDANT's employment practices. PLAINTIFFS and
6 the members of the CALIFORNIA CLASS were and are similarly or
7 identically harmed by the same unlawful, deceptive and unfair
8 misconduct engaged in by DEFENDANT; and,

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10
11 (d) The representative PLAINTIFFS will fairly and adequately represent
12 and protect the interest of the CALIFORNIA CLASS, and have
13 retained counsel who are competent and experienced in Class Action
14 litigation. There are no material conflicts between the claims of the
15 representative PLAINTIFFS and the members of the CALIFORNIA
16 CLASS that would make class certification inappropriate. Counsel for
17 the CALIFORNIA CLASS will vigorously assert the claims of all
18 CALIFORNIA CLASS Members.
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22 33. In addition to meeting the statutory prerequisites to a Class Action, this action
23 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

3
4 1) Inconsistent or varying adjudications with respect to individual
5 members of the CALIFORNIA CLASS which would establish
6 incompatible standards of conduct for the parties opposing the
7 CALIFORNIA CLASS; and/or,

8
9 2) Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.
14

15 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
16 to act on grounds generally applicable to the CALIFORNIA CLASS,
17 making appropriate class-wide relief with respect to the CALIFORNIA
18 CLASS as a whole in that DEFENDANT failed to pay all wages due to
19 members of the CALIFORNIA CLASS as required by law;
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21
22 1) With respect to the First Cause of Action, the final relief on
23 behalf of the CALIFORNIA CLASS sought does not relate
24 exclusively to restitution because through this claim
25 PLAINTIFFS seek declaratory relief holding that the
26 DEFENDANT's policy and practices constitute unfair
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1 competition, along with declaratory relief, injunctive relief, and
2 incidental equitable relief as may be necessary to prevent and
3 remedy the conduct declared to constitute unfair competition;
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5 (c) Common questions of law and fact exist as to the members of the
6 CALIFORNIA CLASS, with respect to the practices and violations of
7 California law as listed above, and predominate over any question
8 affecting only individual CALIFORNIA CLASS Members, and a Class
9 Action is superior to other available methods for the fair and efficient
10 adjudication of the controversy, including consideration of:
11

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

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4 B. Adjudications with respect to individual members of the
5 CALIFORNIA CLASS would as a practical matter be
6 dispositive of the interests of the other members not
7 parties to the adjudication or substantially impair or
8 impede their ability to protect their interests;
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10 3) In the context of wage litigation because a substantial number of
11 individual CALIFORNIA CLASS Members will avoid asserting
12 their legal rights out of fear of retaliation by DEFENDANT,
13 which may adversely affect an individual's job with
14 DEFENDANT or with a subsequent employer, the Class Action
15 is the only means to assert their claims through a representative;
16 and,
17

18 4) A class action is superior to other available methods for the fair
19 and efficient adjudication of this litigation because class
20 treatment will obviate the need for unduly and unnecessary
21 duplicative litigation that is likely to result in the absence of
22 certification of this action pursuant to Cal. Code of Civ. Proc. §
23 382.
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1 34. This Court should permit this action to be maintained as a Class Action
2 pursuant to Cal. Code of Civ. Proc. § 382 because:
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4 (a) The questions of law and fact common to the CALIFORNIA CLASS
5 predominate over any question affecting only individual
6 CALIFORNIA CLASS Members because the DEFENDANT's
7 employment practices are applied with respect to the CALIFORNIA
8 CLASS;
9

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 CLASS because in the context of employment
13 litigation a substantial number of individual CALIFORNIA CLASS
14 Members will avoid asserting their rights individually out of fear of
15 retaliation or adverse impact on their employment;
16

17 (c) The members of the CALIFORNIA CLASS are so numerous that it is
18 impractical to bring all members of the CALIFORNIA CLASS before
19 the Court;
20

21 (d) PLAINTIFFS and the other CALIFORNIA CLASS Members, will not
22 be able to obtain effective and economic legal redress unless the action
23 is maintained as a Class Action;
24

25 (e) There is a community of interest in obtaining appropriate legal and
26 equitable relief for the acts of unfair competition, statutory violations
27
28

1 and other improprieties, and in obtaining adequate compensation for
2 the damages and injuries which DEFENDANT's actions have inflicted
3 upon the CALIFORNIA CLASS;
4

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

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

14 (h) The members of the CALIFORNIA CLASS are readily ascertainable
15 from the business records of DEFENDANT; and,
16

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

22 35. DEFENDANT maintains records from which the Court can ascertain and
23 identify by job title each of DEFENDANT's employees who have been intentionally
24 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
25 PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of
26 similarly situated employees when they have been identified.
27
28

THE CALIFORNIA LABOR SUB-CLASS

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

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

DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR

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

3
4 38. DEFENDANT maintains records from which the Court can ascertain and
5 identify by name and job title, each of DEFENDANT's employees who have been
6 intentionally subjected to DEFENDANT's company policy, practices and procedures as
7 herein alleged. PLAINTIFFS will seek leave to amend the complaint to include any
8 additional job titles of similarly situated employees when they have been identified.
9

10 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable.
12

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

- 15 (a) Whether DEFENDANT unlawfully failed to correctly calculate and
16 pay compensation due to members of the CALIFORNIA LABOR
17 SUB-CLASS for missed meal and rest breaks in violation of the
18 California Labor Code and California regulations and the applicable
19 California Wage Order;
20
21 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the
22 other members of the CALIFORNIA LABOR SUB-CLASS with
23 accurate itemized wage statements;
24
25 (c) Whether DEFENDANT has engaged in unfair competition by the
26 above-listed conduct;
27
28

- 1 (d) The proper measure of damages and penalties owed to the members of
2 the CALIFORNIA LABOR SUB-CLASS; and,
3
4 (e) Whether DEFENDANT's conduct was willful.

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

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

14 42. This Class Action meets the statutory prerequisites for the maintenance of a
15 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:
16

- 17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
18 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
19 CLASS Members is impracticable and the disposition of their claims as
20 a class will benefit the parties and the Court;
21
22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
23 issues that are raised in this Complaint are common to the
24 CALIFORNIA LABOR SUB-CLASS and will apply to every member
25 of the CALIFORNIA LABOR SUB-CLASS;
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- 1 (c) The claims of the representative PLAINTIFFS are typical of the claims
2 of each member of the CALIFORNIA LABOR SUB-CLASS.
3 PLAINTIFFS, like all the other members of the CALIFORNIA
4 LABOR SUB-CLASS, were non-exempt employees paid on an hourly
5 basis who were subjected to the DEFENDANT's practice and policy
6 which failed to pay the correct amount of wages due to the
7 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained
8 economic injury as a result of DEFENDANT's employment practices.
9 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
10 CLASS were and are similarly or identically harmed by the same
11 unlawful, deceptive, and unfair misconduct engaged in by
12 DEFENDANT; and,
13
14 (d) The representative PLAINTIFFS will fairly and adequately represent
15 and protect the interest of the CALIFORNIA LABOR SUB-CLASS,
16 and have retained counsel who are competent and experienced in Class
17 Action litigation. There are no material conflicts between the claims of
18 the representative PLAINTIFFS and the members of the
19 CALIFORNIA LABOR SUB-CLASS that would make class
20 certification inappropriate. Counsel for the CALIFORNIA LABOR
21 SUB-CLASS will vigorously assert the claims of all CALIFORNIA
22 LABOR SUB-CLASS Members.
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1 43. In addition to meeting the statutory prerequisites to a Class Action, this action
2 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

- 8
9 1) Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA LABOR SUB-CLASS which
11 would establish incompatible standards of conduct for the
12 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
13
14 2) Adjudication with respect to individual members of the
15 CALIFORNIA LABOR SUB-CLASS which would as a
16 practical matter be dispositive of interests of the other members
17 not party to the adjudication or substantially impair or impede
18 their ability to protect their interests.

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

2 CALIFORNIA LABOR SUB-CLASS as required by law;

3
4 (c) Common questions of law and fact predominate as to the members of
5 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
6 and violations of California Law as listed above, and predominate over
7 any question affecting only individual CALIFORNIA LABOR SUB-
8 CLASS Members, and a Class Action is superior to other available
9 methods for the fair and efficient adjudication of the controversy,
10 including consideration of:
11

12
13 1) The interests of the members of the CALIFORNIA LABOR
14 SUB-CLASS in individually controlling the prosecution or
15 defense of separate actions in that the substantial expense of
16 individual actions will be avoided to recover the relatively small
17 amount of economic losses sustained by the individual
18 CALIFORNIA LABOR SUB-CLASS Members when
19 compared to the substantial expense and burden of individual
20 prosecution of this litigation;
21
22

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

25 A. Inconsistent or varying adjudications with respect to
26 individual members of the CALIFORNIA LABOR SUB-
27
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1 CLASS, which would establish incompatible standards
2 of conduct for the DEFENDANT; and/or,

3
4 B. Adjudications with respect to individual members of the
5 CALIFORNIA LABOR SUB-CLASS would as a
6 practical matter be dispositive of the interests of the other
7 members not parties to the adjudication or substantially
8 impair or impede their ability to protect their interests;
9

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

18
19 4) A class action is superior to other available methods for the fair
20 and efficient adjudication of this litigation because class
21 treatment will obviate the need for unduly and unnecessary
22 duplicative litigation that is likely to result in the absence of
23 certification of this action pursuant to Cal. Code of Civ. Proc. §
24 382.
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1 44. This Court should permit this action to be maintained as a Class Action
2 pursuant to Cal. Code of Civ. Proc. § 382 because:
3

4 (a) The questions of law and fact common to the CALIFORNIA LABOR
5 SUB-CLASS predominate over any question affecting only individual
6 CALIFORNIA LABOR SUB-CLASS Members;

7 (b) A Class Action is superior to any other available method for the fair
8 and efficient adjudication of the claims of the members of the
9 CALIFORNIA LABOR SUB-CLASS because in the context of
10 employment litigation a substantial number of individual
11 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
12 their rights individually out of fear of retaliation or adverse impact on
13 their employment;
14

15 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
16 numerous that it is impractical to bring all members of the
17 CALIFORNIA LABOR SUB-CLASS before the Court;
18

19 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
20 Members, will not be able to obtain effective and economic legal
21 redress unless the action is maintained as a Class Action;
22

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

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

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

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

18
19 (i) Class treatment provides manageable judicial treatment calculated to
20 bring a efficient and rapid conclusion to all litigation of all wage and
21 hour related claims arising out of the conduct of DEFENDANT as to
22 the members of the CALIFORNIA LABOR SUB-CLASS.
23

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

5
6 45. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
7 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
8 this Complaint.
9

10 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
11 Code § 17021.
12

13 47. California Business & Professions Code §§ 17200, (the “UCL”) defines
14 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
15 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
16 competition as follows:
17

18 Any person who engages, has engaged, or proposes to engage in unfair
19 competition may be enjoined in any court of competent jurisdiction. The court
20 may make such orders or judgments, including the appointment of a receiver,
21 as may be necessary to prevent the use or employment by any person of any
22 practice which constitutes unfair competition, as defined in this chapter, or as
23 may be necessary to restore to any person in interest any money or property,
24 real or personal, which may have been acquired by means of such unfair
25 competition.
26

27 Cal. Bus. & Prof. Code § 17203.
28

48. By the conduct alleged herein, DEFENDANT has engaged and continues to
engage in a business practice which violates California law, including but not limited to, the
applicable Industrial Wage Order(s), the California Code of Regulations and the California

1 Labor Code including Sections 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802
2 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for which
3 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof.
4 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
5 unfair competition, including restitution of wages wrongfully withheld.
6

7 49. By the conduct alleged herein, DEFENDANT's practices were unlawful and
8 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
9 unscrupulous or substantially injurious to employees, and were without valid justification or
10 utility for which this Court should issue equitable and injunctive relief pursuant to Section
11 17203 of the California Business & Professions Code, including restitution of wages
12 wrongfully withheld.
13

14 50. By the conduct alleged herein, DEFENDANT's practices were deceptive and
15 fraudulent in that DEFENDANT's policy and practice failed to provide the legally
16 mandated meal and rest periods, the required amount of compensation for missed meal and
17 rest periods and overtime and minimum wages owed, failed to timely pay wages, and failed
18 to reimburse all necessary business expenses incurred, and failed to provide Fair Labor
19 Standards Act overtime wages due for overtime worked as a result of failing to include non-
20 discretionary incentive compensation into their regular rates of pay for purposes of
21 computing the proper overtime pay due to a business practice that cannot be justified,
22 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
23 in violation of Cal. Bus. Code §§ 17200, and for which this Court should issue injunctive
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1 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
2 wages wrongfully withheld.

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

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

13
14 53. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of
15 each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an
16 off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
17 hour of pay for each workday in which a second off-duty meal period was not timely
18 provided for each ten (10) hours of work.

19
20 54. PLAINTIFFS further demand on behalf of themselves and each member of
21 the CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which
22 an off duty paid rest period was not timely provided as required by law.

23
24 55. By and through the unlawful and unfair business practices described herein,
25 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and
26 the other members of the CALIFORNIA CLASS, including earned wages for all time
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1 worked, and has deprived them of valuable rights and benefits guaranteed by law and
2 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as
3 to allow DEFENDANT to unfairly compete against competitors who comply with the law.
4

5 56. All the acts described herein as violations of, among other things, the
6 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
7 California Labor Code, were unlawful and in violation of public policy, were immoral,
8 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
9 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200.
10

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

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

23 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no
24 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
25 practices of DEFENDANT. Further, the practices herein alleged presently continue to
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1 occur unabated. As a result of the unlawful and unfair business practices described herein,
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will
3 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
4 from continuing to engage in these unlawful and unfair business practices.
5

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8 **SECOND CAUSE OF ACTION**

9 **For Failure To Pay Minimum Wages**

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

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

13
14 60. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
15 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
16 paragraphs of this Complaint.
17

18 61. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
19 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
20 California Labor Code and the Industrial Welfare Commission requirements for
21 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS
22 and CALIFORNIA CLASS Members.
23

24 62. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
25 the commission is the minimum wage to be paid to employees, and the payment of a less
26 wage than the minimum so fixed in unlawful.
27
28

1 63. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
2 wages, including minimum wage compensation and interest thereon, together with the costs
3 of suit.
4

5 64. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the
6 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
7 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
8 unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
9 other members of the CALIFORNIA LABOR SUB-CLASS.
10

11 65. DEFENDANT's unlawful wage and hour practices manifested, without
12 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
13 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and
14 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
15 wage pay.
16

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

24 67. As a direct result of DEFENDANT's unlawful wage practices as alleged
25 herein, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
26
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1 did not receive the correct minimum wage compensation for their time worked for
2 DEFENDANT.

3 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
4 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
5 Members to work without paying them for all the time they were under DEFENDANT's
6 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
7 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
8 that they were entitled to, constituting a failure to pay all earned wages.
9

10
11 69. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true time they worked, PLAINTIFFS and the other members of the
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
15 economic injury in amounts which are presently unknown to them and which will be
16 ascertained according to proof at trial.
17
18

19 70. DEFENDANT knew or should have known that PLAINTIFFS and the other
20 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
21 time worked. DEFENDANT elected, either through intentional malfeasance or gross
22 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
23 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
24 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
25 wages for their time worked.
26
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1 71. In performing the acts and practices herein alleged in violation of California
2 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
3 CLASS for all time worked and provide them with the requisite compensation,
4 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
5 toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
6 with a conscious and utter disregard for their legal rights, or the consequences to them, and
7 with the despicable intent of depriving them of their property and legal rights, and otherwise
8 causing them injury in order to increase company profits at the expense of these employees.
9

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

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4 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS
5 and
6 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
7 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
8 including overtime work.
9

10 78. DEFENDANT's unlawful wage and hour practices manifested, without
11 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
12 implementing a policy and practice that failed to accurately record overtime worked by
13 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
14 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
15 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in
16 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty
17 (40) hours in any workweek.
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20 79. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
23 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
24 violation of the California Labor Code, the Industrial Welfare Commission requirements
25 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
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1 wage practices as alleged herein, the PLAINTIFFS and the other members of the
2 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
3 worked.
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5 80. Cal. Lab. Code § 515 sets out various categories of employees who are
6 exempt from the overtime requirements of the law. None of these exemptions are
7 applicable to the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
8 CLASS. Further, PLAINTIFFS and the other members of the CALIFORNIA LABOR
9 SUB-CLASS were not subject to a valid collective bargaining agreement that would
10 preclude the causes of action contained herein this Complaint. Rather, PLAINTIFFS bring
11 this Action on behalf of themselves and the CALIFORNIA LABOR SUB-CLASS based on
12 DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the State
13 of California.
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16 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS
17 and the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
18 overtime worked that they are entitled to, constituting a failure to pay all earned wages.
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20 82. DEFENDANT failed to accurately pay the PLAINTIFFS and the other
21 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
22 worked which was in excess of the maximum hours permissible by law as required by Cal.
23 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFFS and the other members of the
24 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work,
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1 overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
2 DEFENDANT's business records and witnessed by employees.

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

11 84. DEFENDANT knew or should have known that PLAINTIFFS and the other
12 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
13 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
14 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
15 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
16 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.
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18 85. In performing the acts and practices herein alleged in violation of California
19 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
20 CLASS for all overtime worked and provide them with the requisite overtime
21 compensation, DEFENDANT acted and continues to act intentionally, oppressively, and
22 maliciously toward PLAINTIFFS and the other members of the CALIFORNIA LABOR
23 SUB-CLASS with a conscious of and utter disregard for their legal rights, or the
24 consequences to them, and with the despicable intent of depriving them of their property
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1 and legal rights, and otherwise causing them injury in order to increase company profits at
2 the expense of these employees.

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

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

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

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24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**
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1 87. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
3 paragraphs of this Complaint.
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5 88. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to
6 time failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the
7 other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage
8 Order and Labor Code. The nature of the work performed by PLAINTIFFS and
9 CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from
10 being relieved of all of their duties for the legally required off-duty meal periods. As a
11 result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR
12 SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT
13 for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFFS and
14 the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior
15 to their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time
16 to time. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA
17 CLASS Members with a second off-duty meal period in some workdays in which these
18 employees were required by DEFENDANT to work ten (10) hours of work from time to
19 time. As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-
20 CLASS therefore forfeited meal breaks without additional compensation and in accordance
21 with DEFENDANT's strict corporate policy and practice.
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89. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal 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 a meal period was not provided.

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

91. PLAINTIFFS, 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.

92. PLAINTIFFS 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

1 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
2 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
3 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
4 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

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

9
10 93. DEFENDANT further violated California Labor Code §§ 226.7 and the
11 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
12 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
13 the applicable Wage Order, one additional hour of compensation at each employee's regular
14 rate of pay for each workday that rest period was not provided.

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

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1 **SIXTH CAUSE OF ACTION**

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

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4 **[Cal. Lab. Code § 226]**

5 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
6 **Defendants)**

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

11 96. Cal. Labor Code § 226 provides that an employer must furnish employees
12 with
13 an “accurate itemized” statement in writing showing:
14

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

1 97. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
2 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
3 wage statements which failed to show, among other things, the correct gross and net wages
4 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
5 employees with an accurate itemized wage statement in writing showing, among other
6 things, gross wages earned and all applicable hourly rates in effect during the pay period
7 and the corresponding amount of time worked at each hourly rate. PLAINTIFFS and
8 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
9 wage statements should reflect all applicable hourly rates during the pay period and the total
10 hours worked, and the applicable pay period in which the wages were earned pursuant to
11 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
12 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
13 such information. More specifically, the wage statements failed to identify the accurate total
14 hours worked each pay period. When the hours shown on the wage statements were added
15 up, they did not equal the actual total hours worked during the pay period in violation of
16 Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
17 DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
18 requirements under California Labor Code 226. As a result, DEFENDANT from time to
19 time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
20 CLASS with wage statements which violated Cal. Lab. Code § 226.
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1 98. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
2 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
3 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
4 expended calculating the correct wages for all missed meal and rest breaks and the amount
5 of employment taxes which were not properly paid to state and federal tax authorities.
6 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
7 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
8 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
9 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
10 226, in an amount according to proof at the time of trial (but in no event more than four
11 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
12 CALIFORNIA LABOR SUB-CLASS herein).

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18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 2802]**

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

23
24 99. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members
25 reallege and incorporate by this reference, as though fully set forth herein, the prior
26 paragraphs of this Complaint.
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1 100. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

1 these expenses as an employer is required to do under the laws and regulations of
2 California.

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4 102. PLAINTIFFS therefore demand reimbursement for expenditures or losses
5 incurred by themselves and the CALIFORNIA LABOR SUB-CLASS members in the
6 discharge of their job duties for DEFENDANT, or their obedience to the directions of
7 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.
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10 **EIGHTH CAUSE OF ACTION**

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

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

13 **(By PLAINTIFFS, and the CALIFORNIA LABOR SUB-CLASS**

14 **and Against All Defendants)**

15
16 103. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
18 paragraphs of this Complaint.
19

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

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

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

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

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

6 If an employee not having a written contract for a definite period quits his
7 or her employment, his or her wages shall become due and payable not
8 later than 72 hours thereafter, unless the employee has given 72 hours
9 previous notice of his or her intention to quit, in which case the employee
10 is entitled to his or her wages at the time of quitting. Notwithstanding any
11 other provision of law, an employee who quits without providing a 72-
12 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.

13 106. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR
14 SUB-CLASS Members’ employment contract.
15

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

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

22 108. The employment of PLAINTIFFS, and many CALIFORNIA LABOR
23 SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all
24 wages owed as required by law. Additionally, at all times during the term of PLAINTIFFS’
25 employment with DEFENDANT, PLAINTIFFS, and CALIFORNIA LABOR SUB-CLASS
26 Members earned and accrued vested vacation and holiday time on the date of their
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1 termination pursuant to DEFENDANT's uniform vacation policies and applicable
2 California law. The amount of vacation pay PLAINTIFFS, and the other CALIFORNIA
3 LABOR SUB-CLASS Members earned and accumulated is evidenced by DEFENDANT's
4 business records. Additionally, DEFENDANT also underpaid accrued vested vacation
5 wages to PLAINTIFFS, and other CALIFORNIA LABOR SUB-CLASS MEMBERS by
6 failing to pay such wages at the regular rate of pay and more specifically the final rate of
7 pay that included all non-discretionary incentive compensation. Rather than pay vacation
8 wages at the regular rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFFS
9 and other CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead
10 of including all of PLAINTIFFS', and CALIFORNIA LABOR SUB-CLASS Members'
11 non-discretionary incentive compensation into the vacation wage payment calculations.
12
13 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
14 PLAINTIFFS, and other CALIFORNIA LABOR CLASS Members would be paid vacation
15 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
16 practice, policy and procedure to deny paying PLAINTIFFS, and the other members of the
17 CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
18 DEFENDANT failed to pay PLAINTIFFS, and the members of the CALIFORNIA LABOR
19 SUB-CLASS all vested vacation time as wages due upon employment termination, in
20 violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
21 DEFENDANT underpaid waiting time penalties to PLAINTIFFS, and other CALIFORNIA
22 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
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1 PLAINTIFFS', and the CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
2 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
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4 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to
5 provide compensation for earned, accrued and vested vacation and holiday time, as well as
6 the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
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8 unlawful, unfair and deceptive practice to the detriment of PLAINTIFFS, and the members
9 of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT's uniform practice and policy
10 of failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday
11 time accumulated at employment termination violated and continues to violate Section
12 227.3 of the California Labor Code.

13
14 109. Therefore, as provided by Cal Lab. Code § 203, on behalf of PLAINTIFFS
15 and members of the CALIFORNIA LABOR SUB-CLASS whose employment has
16 terminated and who have not been fully paid their wages due to them, PLAINTIFFS
17 demand thirty days of pay as penalty for not paying all wages due at time of termination for
18 all employees who terminated employment during the CALIFORNIA LABOR SUB-
19 CLASS PERIOD and demand an accounting and payment of all wages due, plus interest
20 and statutory costs as allowed by law.
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23 **NINTH CAUSE OF ACTION**

24 **For Failure to Pay Sick Pay Wages**

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

26
27 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**
28

and Against All Defendants)

110. PLAINTIFFS, 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.

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

112. As a matter of policy and practice, DEFENDANT pays sick pay wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn

1 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
2 wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS
3 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
4 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
5 employee's total wages, not including overtime premium pay, by the employee's total hours
6 worked in the full pay periods of the prior 90 days of employment. As a result,
7 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
8 CALIFORNIA LABOR-SUB-CLASS.
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11 113. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick
12 leave, vested sick pay wages are due and to be paid no later than the payday for the next
13 regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab.
14 Code § 201 provides that if an employer discharges an employee, wages earned and unpaid
15 at the time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides
16 that an employee is entitled to receive all unpaid wages no later than 72 hours after an
17 employee quits his or her employment, unless the employee has given 72-hour notice of his
18 or her intention to quit, in which case the employee is entitled to his or her wages at the time
19 of quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code §
20 203 provides that if an employer willfully fails to pay wages owed in accordance with Cal.
21 Lab. Code §§ 201-202, then the wages of the employee shall continue as a penalty from the
22 due date, and at the same rate until paid, but the wages shall not continue for more than
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thirty (30) days. Under Cal. Lab. Code §§ 203 and 218, employees may sue to recover applicable penalties.

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

115. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles PLAINTIFFS 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.

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TENTH CAUSE OF ACTION
For Violation of the Private Attorneys General Act
[Cal. Lab. Code §§ 2698, *et seq.*]
(By PLAINTIFFS and Against All Defendants)

116. PLAINTIFFS reallege and incorporate by this 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. PLAINTIFFS, 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, bring this Representative Action on behalf of the State of California with respect to themselves 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") during the time period of April 15, 2023 until a date as determined by the Court (the "PAGA PERIOD").

119. On April 15, 2024, PLAINTIFF Ana Vasilic gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as

1 required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this
2 reference herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
3 PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to
4 Section 2699.3, PLAINTIFF may pursue a representative civil action under PAGA pursuant
5 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
6 EMPLOYEES as herein defined.

7
8 120. The policies, acts and practices heretofore described were and are an unlawful
9 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
10 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
11 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
12 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
13 expenses, (f) failed to provide wages when due, (g) failed to provide suitable seating, and (h)
14 failed to provide gratuities, all in violation of the applicable Labor Code sections listed in Labor
15 Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512,
16 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2802, California Code of Regulations,
17 Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8,
18 Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and
19 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seek
20 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of
21 2004 as the representatives of the State of California for the illegal conduct perpetrated on
22 PLAINTIFFS and the AGGRIEVED EMPLOYEES.

23 121. All of the conduct and violations alleged herein occurred during the PAGA
24 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
25 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seeks penalties for those violations
26 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
27 2018 AJDAR 12157 (Certified for Publication 12/19/18).
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1. On behalf of the CALIFORNIA CLASS:

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

- 8

- 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
7 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
8 the applicable IWC Wage Order;
9
10 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
11 1197;
12
13 F) The amount of the expenses PLAINTIFFS and each member of the
14 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
15 plus interest, and costs of suit.; and,
16
17 G) The wages of all terminated employees in the CALIFORNIA LABOR
18 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
19 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

22 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
23 General Act of 2004.

24 4. On all claims:

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

26 B) Such other and further relief as the Court deems just and equitable; and,
27
28

1 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
3 and/or §2802.
4

5 Dated: January 28, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

6
7 By: /s/ Nicholas J. De Blouw

8 Norman B. Blumenthal
9 Nicholas J. De Blouw

10 *Attorneys for Plaintiffs*
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DEMAND FOR A JURY TRIAL

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

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

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

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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April 15, 2024

CA3281

WRITERS EXT:

1004

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Simco Restaurants, Inc.
Certified Mail #9589071052700408543700
SANDRA FLETCHER
100 MOSS LANE
NAPA, CA 94558

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Simco Restaurants, Inc. in California, including any employees staffed with Simco Restaurants, Inc. by a third party, and classified as non-exempt employees during the time period of April 15, 2023 until a date as determined by the Court. Our offices represent Ana Vasilic (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Simco Restaurants, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from January of 2023 to December of 2023. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 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 Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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