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1004

June 28, 2024

CA3330

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

KBI Services, Inc.
Certified Mail #9589071052702163358186
Cogency Global Inc.
1325 J. Street, Suite 1550
Sacramento, CA 95814

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 KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. in California, including any employees staffed with KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. by a third party, and classified as non-exempt employees during the time period of June 28, 2023 until a date as determined by the Court. Our offices represent Plaintiffs Katerina Jones and Bailey Kilmer (“Plaintiff”) and other Aggrieved Employees in a lawsuit against KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. (“Defendant”). Plaintiff Jones has been employed by Defendant in California since November of 2023. Plaintiff Kilmer has been employed by Defendant in California since February 2024. Plaintiffs have been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs 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 Plaintiffs 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 Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs 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 Plaintiffs 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 Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFFS 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 PLAINTIFFS 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, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs 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 Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

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

Respectfully,

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

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Fahimeh Sasan, D.O., P.C.
Certified Mail #9589071052702163358179
Cogency Global Inc.
Erin Haggerty
1325 J. Street, Suite 1550
Sacramento, CA 95814

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 KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. in California, including any employees staffed with KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. by a third party, and classified as non-exempt employees during the time period of June 28, 2023 until a date as determined by the Court. Our offices represent Plaintiffs Katerina Jones and Bailey Kilmer (“Plaintiff”) and other Aggrieved Employees in a lawsuit against KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. (“Defendant”). Plaintiff Jones has been employed by Defendant in California since November of 2023. Plaintiff Kilmer has been employed by Defendant in California since February 2024. Plaintiffs have been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs 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 Plaintiffs 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 Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs 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 Plaintiffs 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 Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFFS 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 PLAINTIFFS 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, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs 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 Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

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

Respectfully,

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

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

KATERINA JONES and BAILEY KILMER,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

KBI SERVCIIES, INC., a Corporation;
FAHIMEH SASAN, D.O., P.C., a Professional
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

1 Katerina Jones and Bailey Kilmer (“PLAINTIFFS”), individuals, on behalf of themselves
2 and all other similarly situated current and former employees alleges on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

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

8 2. Fahimeh Sasan, D.O., P.C. is a professional corporation that at all relevant times
9 mentioned herein conducted and continues to conduct substantial business in California.

10 2. KBI Services, Inc. and Fahimeh Sasan, D.O., P.C. are the joint employers of
11 PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work for
12 respectively, and are therefore jointly responsible as employers for the conduct alleged herein,
13 and are therefore collectively referred to herein as (“DEFENDANT”).

14 3. DEFENDANT provides healthcare services in California.

15 4. Plaintiff Jones is currently employed by DEFENDANT in California. Plaintiff
16 Jones has been employed with DEFENDANT since November of 2023. Plaintiff Jones has
17 been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
18 basis, and entitled to the legally required meal and rest periods and payment of minimum and
19 overtime wages due for all time worked. Plaintiff Kilmer is currently employed by
20 DEFENDANT in California. Plaintiff Kilmer has been employed with DEFENDANT since
21 February of 2024. Plaintiff Jones has been at all times classified by DEFENDANT as a non-
22 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
23 periods and payment of minimum and overtime wages due for all time worked.

24 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
25 class, defined as all individuals who are or previously were employed by KBI Services, Inc.
26 and/or Fahimeh Sasan, D.O., P.C. in California, including any employees staffed with KBI
27 Services, Inc. and/or Fahimeh Sasan, D.O., P.C. by a third party, and classified as non-exempt
28 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years

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

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

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

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

1 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and
2 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
3 of the conduct of the Defendants' agents, servants and/or employees.

4 THE CONDUCT

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

1 10. State and federal law provides that employees must be paid overtime and meal
2 and rest break premiums at one-and-one-half times their “regular rate of pay.”

3 PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an hourly rate
4 plus incentive pay that is tied to specific elements of an employee’s performance.

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

20 12. As a result of their rigorous work schedules, PLAINTIFFS and other
21 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
22 off duty meal breaks and were not fully relieved of duty for their meal periods.
23 PLAINTIFFS and other CALIFORNIA CLASS Members were required from time to time
24 to perform work as ordered by DEFENDANT for more than five (5) hours during some
25 shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
26 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal
27 period for some workdays in which these employees were required by DEFENDANT to
28 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 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
6 CALIFORNIA CLASS Members were also required from time to time to work in excess of
7 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
8 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
9 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
10 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
11 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
12 worked of ten (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA
13 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
14 the applicable California Wage Order requires employers to provide employees with off-
15 duty rest periods, which the California Supreme Court defined as time during which an
16 employee is relieved from all work related duties and free from employer control. In so
17 doing, the Court held that the requirement under California law that employers authorize and
18 permit all employees to take rest period means that employers must relieve employees of all
19 duties and relinquish control over how employees spend their time which includes control
20 over the locations where employees may take their rest period. Employers cannot impose
21 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
22 back. Here, DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA
23 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
24 which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the
25 work premises during their rest period.

26 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
27 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
28 actual amount of time these employees worked. Pursuant to the Industrial Welfare

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

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

1 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS
2 an itemized wage statement that lists all the requirements under California Labor Code 226
3 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
4 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
5 § 226.

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

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

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

22 19. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS
23 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
24 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS is
25 informed and believes and based thereon alleges that such failure to pay sick pay at regular
26 rate was willful, such that PLAINTIFFS and members of the CALIFORNIA CLASS whose
27
28

1 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
2 Sections 201-203.

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

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

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

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

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

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

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

26 26. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the
27 legally required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable
28 Wage Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime

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

9 10 **JURISDICTION AND VENUE**

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

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

21 22 **THE CALIFORNIA CLASS**

23 29. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
24 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
25 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
26 California class, defined as all individuals who are or previously were employed by KBI
27 Services, Inc. and/or Fahimeh Sasan, D.O., P.C. in California, including any employees
28

1 staffed with KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. by a third party, and
2 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
3 period beginning four (4) years prior to the filing of this Complaint and ending on the date
4 as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
5 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
6 million dollars (\$5,000,000.00).

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

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

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

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

1 34. DEFENDANT violated the rights of the CALIFORNIA CLASS under
2 California law by:

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

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

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

1 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
2 result of DEFENDANT's employment practices. PLAINTIFFS and the
3 members of the CALIFORNIA CLASS were and are similarly or
4 identically harmed by the same unlawful, deceptive and unfair
5 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 **THE CALIFORNIA LABOR SUB-CLASS**

10 39. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
11 and Eighth causes Action on behalf of a California sub-class, defined as all members of the
12 CALIFORNIA CLASS who are or previously were employed by KBI Services, Inc. and/or
13 Fahimeh Sasan, D.O., P.C. in California, including any employees staffed with KBI
14 Services, Inc. and/or Fahimeh Sasan, D.O., P.C. by a third party, and classified as non-
15 exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the
16 period three (3) years prior to the filing of the complaint and ending on the date as
17 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant
18 to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
19 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
20 (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

1 SUB-CLASS will vigorously assert the claims of all CALIFORNIA
2 LABOR SUB-CLASS Members.

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

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

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

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

25 (c) Common questions of law and fact predominate as to the members of
26 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
27 and violations of California Law as listed above, and predominate over
28 any question affecting only individual CALIFORNIA LABOR SUB-

1 CLASS Members, and a Class Action is superior to other available
2 methods for the fair and efficient adjudication of the controversy,
3 including consideration of:

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

1 Action is the only means to assert their claims through a
2 representative; and,

- 3 4) A class action is superior to other available methods for the fair
4 and efficient adjudication of this litigation because class
5 treatment will obviate the need for unduly and unnecessary
6 duplicative litigation that is likely to result in the absence of
7 certification of this action pursuant to Cal. Code of Civ. Proc. §
8 382.

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

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

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 LABOR SUB-CLASS;

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

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

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

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

21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

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

25 48. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
26 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
27 this Complaint.
28

1 49. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
2 Code § 17021.

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

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

15 Cal. Bus. & Prof. Code § 17203.

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

24 52. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
25 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
26 unscrupulous or substantially injurious to employees, and were without valid justification or
27 utility for which this Court should issue equitable and injunctive relief pursuant to Section
28 17203 of the California Business & Professions Code, including restitution of wages
wrongfully withheld.

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

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

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

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

19 56. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of
20 each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an
21 off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
22 hour of pay for each workday in which a second off-duty meal period was not timely
23 provided for each ten (10) hours of work.

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

27 58. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and

1 the other members of the CALIFORNIA CLASS, including earned wages for all time
2 worked, and has deprived them of valuable rights and benefits guaranteed by law and
3 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
4 allow DEFENDANT to unfairly compete against competitors who comply with the law.

5 59. 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, *et*
10 *seq.*

11 60. 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 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS are
18 further entitled to, and do, seek a declaration that the described business practices are
19 unlawful, unfair and deceptive, and that injunctive relief should be issued restraining
20 DEFENDANT from engaging in any unlawful and unfair business practices in the future.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13
14 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

20 **FIFTH CAUSE OF ACTION**

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

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

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

25 94. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
26 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
27 paragraphs of this Complaint.
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95. 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 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.

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

96. DEFENDANT further violated 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 rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

97. 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.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

98. 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.

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

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

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

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

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

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

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

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

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

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

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

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1 **EIGHTH CAUSE OF ACTION**

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

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

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

5 **and Against All Defendants)**

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

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

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

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

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

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

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

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

10 11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

21 3. On all claims:

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

27 Dated: June 13, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

Attorneys for PLAINTIFFS

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DEMAND FOR A JURY TRIAL

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

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

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

Attorneys for PLAINTIFFS