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June 27, 2024
CA3249

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

SHC Services, Inc.
Certified Mail #9589071052702163358124
CSC - LAWYERS INCORPORATING
SERVICE
BECKY DEGEORGE
2710 GATEWAY OAKS DRIVE, Suite
150N
SACRAMENTO, CA 95833

Amended Notice For Case No. LWDA-CM-1021045-24

Re: Amended 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,
2802, California Code of Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of Regulations, Title 8,
Section 1 1070(14) (Failure to Provide Seating), and Violation of
Applicable Industrial Welfare Commission Wage Order(s), brought
Pursuant To California Labor Code Section 2699.5.

Dear Counsel:

Our office originally sent a PAGA Notice on April 8, 2024 which gave notice to the LWDA and Defendant to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to add an additional Plaintiff, Alicia Calvert.

“Aggrieved Employees” refers to all individuals who are or previously were employed by SHC Services, Inc. in California, including any employees staffed with SHC Services, Inc. a third party, and classified as non-exempt employees during the time period of April 8, 2023 until a date as determined by the Court. Our offices represent Plaintiffs Jeremiah Costello and Alicia Calvert (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against SHC Services, Inc. (“Defendant”). Plaintiff Costello was employed by Defendant in California from December of 2022 to April of 2024. Plaintiff Calvert was employed by Defendant in California from

March 11, 2024 to April 1, 2024. Plaintiffs were 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 Plaintiff 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 her, 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 11070(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 incorporate 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 Statute 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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7 Attorneys for Plaintiffs

8 *[Additional Counsel Listed on Signature Page]*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF ORANGE**

11 JEREMIAH COSTELLO, an individual, on
12 behalf of himself; ALICIA CALVERT, an
individual, on behalf of herself, and on behalf of
13 all persons similarly situated,

14
15 Plaintiffs,

16 vs.

17 SHC SERVICES, INC., a corporation; and
DOES 1 through 50, inclusive,

18
19 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

28 _____ Jeremiah Costello and Alicia Calvert ("PLAINTIFFS"), individuals, on behalf of

1 themselves and on behalf of all other similarly situated current and former employees allege on
2 information and belief, except for their own acts and knowledge which are based on personal
3 knowledge, the following.

4
5 **THE PARTIES**

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

8 2. DEFENDANT provides healthcare services in California.

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

13 4. Plaintiff Calvert was employed by DEFENDANT in California from March 11,
14 2024 to April 1, 2024. Plaintiff Calvert was at all times classified by DEFENDANT as a non-
15 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
16 periods and payment of minimum and overtime wages due for all time worked.

17 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
18 class, defined as all individuals who are or previously were employed by DEFENDANT in
19 California, including any employees staffed with DEFENDANT by a third party, and classified
20 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
21 beginning four (4) years prior to the filing of this Complaint and ending on the date as
22 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
23 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
24 (\$5,000,000.00).

25 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
26 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
27 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s
28 policy and practice which failed to lawfully compensate these employees. DEFENDANT’s

policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due to PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time

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

24 10. State and federal law provides that employees must be paid overtime and meal
25 and rest break premiums at one-and-one-half times their "regular rate of pay."
26 PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an hourly rate
27 plus incentive pay that is tied to specific elements of an employee's performance.
28

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

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

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

22 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
23 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
24 actual amount of time these employees worked. Pursuant to the Industrial Welfare
25 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and other
26 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
27 employee was subject to the control of an employer, including all the time the employee was
28 permitted or suffered to permit this work. DEFENDANT required these employees to work

1 off the clock without paying them for all the time they were under DEFENDANT's control.
2 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
3 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
4 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by
5 working without their time being accurately recorded and without compensation at the
6 applicable minimum wage and overtime wage rates. To the extent that the time worked off
7 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
8 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
9 1197, and 1197.1.

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

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

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

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

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

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

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

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

17 22. In the course of their employment PLAINTIFFS and other CALIFORNIA
18 CLASS Members as a business expense, were required by DEFENDANT to use their own
19 personal cellular phones as a result of and in furtherance of their job duties as employees for
20 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
21 associated with the use of their personal cellular phones for DEFENDANT's benefit.
22 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
23 DEFENDANT to use their personal cellular phones. As a result, in the course of their
24 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
25 CLASS incurred unreimbursed business expenses which included, but were not limited to,
26 costs related to the use of their personal cellular phones all on behalf of and for the benefit of
27 DEFENDANT.
28

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

JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

26. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,

1 defined as all individuals who are or previously were employed by DEFENDANT in
2 California, including any employees staffed with DEFENDANT by a third party, and
3 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
4 period beginning four (4) years prior to the filing of this Complaint and ending on the date
5 as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
6 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
7 million dollars (\$5,000,000.00).

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

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

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

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

1 31. 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, (the "UCL"), by unlawfully, unfairly and/or
5 deceptively having in place company policies, practices and procedures
6 that failed to record and pay PLAINTIFFS and the other members of
7 the CALIFORNIA CLASS for all time worked, including minimum
8 wages owed and overtime wages owed for work performed by these
9 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 32. 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 33. 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 34. 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 the
16 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 35. 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 36. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
11 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
12 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
13 California, including any employees staffed with DEFENDANT by a third party, and
14 classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
15 time during the period three (3) years prior to the filing of the complaint and ending on the
16 date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")
17 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate
18 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
19 (\$5,000,000.00).

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

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

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

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

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

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

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

- 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, 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 42. 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 CALIFORNIA
26 LABOR SUB-CLASS that would make class certification
27 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
28

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

3 43. 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 44. 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 the
2 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.

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21 ///

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24
25 **FIRST CAUSE OF ACTION**

26 **For Unlawful Business Practices**

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

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

1 45. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege
2 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
3 this Complaint.

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

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

27 49. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
28 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section

1 17203 of the California Business & Professions Code, including restitution of wages
2 wrongfully withheld.

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

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

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

23 53. Therefore, PLAINTIFFS demands on behalf of themselves and on behalf of
24 each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an
25 off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
26 hour of pay for each workday in which a second off-duty meal period was not timely
27 provided for each ten (10) hours of work.
28

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

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

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

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

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

25 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no
26 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
27 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
28 unabated. As a result of the unlawful and unfair business practices described herein,

1 PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will
2 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
3 from continuing to engage in these unlawful and unfair business practices.

4
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

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

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

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

13 61. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
14 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
15 California Labor Code and the Industrial Welfare Commission requirements for
16 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS
17 and CALIFORNIA CLASS Members.

18 62. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
19 the commission is the minimum wage to be paid to employees, and the payment of a less
20 wage than the minimum so fixed is unlawful.

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

24 64. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the
25 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
26 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
27 unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
28 other members of the CALIFORNIA LABOR SUB-CLASS.

1 65. 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 denies accurate compensation to PLAINTIFFS and
4 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
5 wage pay.

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

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

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

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

28 70. DEFENDANT knew or should have known that PLAINTIFFS and the other

1 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
2 time worked. DEFENDANT elected, either through intentional malfeasance or gross
3 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
4 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
5 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
6 wages for their time worked.

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

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

27
28 **THIRD CAUSE OF ACTION**

1 **For Failure To Pay Overtime Compensation**

2 **[Cal. Lab. Code § 510]**

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

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

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

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

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

23 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
24 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
25 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
26 including overtime work.

27 78. DEFENDANT's unlawful wage and hour practices manifested, without
28 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of

1 implementing a policy and practice that failed to accurately record overtime worked by
2 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
3 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
4 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in
5 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty
6 (40) hours in any workweek.

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

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

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

26 82. DEFENDANT failed to accurately pay the PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
28 worked which was in excess of the maximum hours permissible by law as required by Cal.

1 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFFS and the other members of the
2 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
3 as to which DEFENDANT failed to accurately record and pay as evidenced by
4 DEFENDANT's business records and witnessed by employees.

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

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

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

26 86. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS therefore request recovery of all overtime wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,

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

10
11 **FOURTH CAUSE OF ACTION**

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

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

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

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

19 88. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
20 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
21 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
22 and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA
23 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
24 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
25 work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members
26 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
27 Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA
28 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)

1 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
2 DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a
3 second off-duty meal period in some workdays in which these employees were required by
4 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFFS
5 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
6 breaks without additional compensation and in accordance with DEFENDANT's strict
7 corporate policy and practice.

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

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

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23 **FIFTH CAUSE OF ACTION**

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

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

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

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

92. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees from time to time were denied their first 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.

93. 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.

94. 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)

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

4 96. Cal. Labor Code § 226 provides that an employer must furnish employees
5 with
6 an “accurate itemized” statement in writing showing:

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

25 97. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
26 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
27 wage statements which failed to show, among other things, the correct gross and net wages
28 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
employees with an accurate itemized wage statement in writing showing, among other
things, gross wages earned and all applicable hourly rates in effect during the pay period and
the corresponding amount of time worked at each hourly rate. PLAINTIFFS and
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

1 such information. More specifically, the wage statements failed to identify the accurate total
2 hours worked each pay period. When the hours shown on the wage statements were added
3 up, they did not equal the actual total hours worked during the pay period in violation of
4 Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
5 DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
6 requirements under California Labor Code 226. As a result, DEFENDANT from time to
7 time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
8 CLASS with wage statements which violated Cal. Lab. Code § 226.

9 98. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
10 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
11 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
12 expended calculating the correct wages for all missed meal and rest breaks and the amount
13 of employment taxes which were not properly paid to state and federal tax authorities.
14 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
15 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
16 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
17 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
18 226, in an amount according to proof at the time of trial (but in no event more than four
19 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
20 CALIFORNIA LABOR SUB-CLASS herein).

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25 **SEVENTH CAUSE OF ACTION**

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

27 **[Cal. Lab. Code § 2802]**

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

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

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

An employer shall indemnify his or her employee for all necessary 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 the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

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

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

5
6 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

15 As used in this article:

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

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

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

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

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

1 107. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
2 SUB-CLASS Members' employment contract.

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

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

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

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

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

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27 **NINTH CAUSE OF ACTION**
28 **For Failure to Pay Sick Pay Wages**

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

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

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

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

20 114. As a matter of policy and practice, DEFENDANT pays sick pay wages to
21 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the
22 incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-
23 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
24 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
25 wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS
26 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
27 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
28 employee's total wages, not including overtime premium pay, by the employee's total hours

1 worked in the full pay periods of the prior 90 days of employment. As a result,
2 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
3 CALIFORNIA LABOR-SUB-CLASS.

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

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

1 willfully fails to timely pay PLAINTIFFS and the other members of the CALIFORNIA
2 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
3 penalties.

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

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
11 severally, as follows:

12 1. On behalf of the CALIFORNIA CLASS:

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

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

- 24 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
25 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
26 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
27 B) Compensatory damages, according to proof at trial, including compensatory
28 damages for minimum and overtime compensation due PLAINTIFFS and the

1 other members of the CALIFORNIA LABOR SUB-CLASS, during the
2 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
3 at the statutory rate;

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

9 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
10 the applicable IWC Wage Order;

11 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
12 1197;

13 F) The amount of the expenses PLAINTIFFS and each member of the
14 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
15 plus interest, and costs of suit.; and,

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

19 3. On all claims:

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

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

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

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27 Dated: June 26, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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By: _____
Norman B. Blumenthal
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DEMAND FOR A JURY TRIAL

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

Dated: June 26, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

Attorneys for Plaintiffs

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