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WRITERS EXT:
1004

April 3, 2024
CA3207

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Matrix Rehabilitation, Inc.
Certified Mail #9589071052700408543465
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Matrix Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. in California, including any employees staffed with Matrix Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. a third party, and classified as non-exempt employees during the time period of April 3, 2023 until a date as determined by the Court. Our offices represent Plaintiffs Rachel Kortuem and Mary Aylward-Pell (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against Matrix Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. (“Defendants”). Plaintiff Kortuem was employed by Defendants in California from November of 2022 to February 13, 2024. Plaintiff Aylward-Pell was employed by Defendants in California from September of 2021 to October of 2023. Plaintiffs were at all times classified by Defendants 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. Defendants, 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 Defendants required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendants 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 Defendants 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 Defendants failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendants 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.*, Defendants failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendants 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 Defendants 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 Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants 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. Defendants failed to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendants, 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 Defendants, 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 Defendants as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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Certified Mail #9589071052700408543458
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AMANDA GARCIA
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GLENDALE, CA 91203**

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Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Matrix Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. in California, including any employees staffed with Matrix Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. a third party, and classified as non-exempt employees during the time period of April 3, 2023 until a date as determined by the Court. Our offices represent Plaintiffs Rachel Kortuem and Mary Aylward-Pell (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against Matrix Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. (“Defendants”). Plaintiff Kortuem was employed by Defendants in California from November of 2022 to February 13, 2024. Plaintiff Aylward-Pell was employed by Defendants in California from September of 2021 to October of 2023. Plaintiffs were at all times classified by Defendants 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. Defendants, 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 Defendants required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendants 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 Defendants 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 Defendants failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendants 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.*, Defendants failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendants 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 Defendants 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 Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants 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. Defendants 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.

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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.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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2 Kyle R. Nordrehaug (State Bar #205975)

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Website: www.bamlawca.com

6 Attorneys for Plaintiffs

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

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

9
10 RACHEL KORTUEM and MARY AYLWARD-
11 PELL, individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

12
13 Plaintiffs,

14 vs.

15 MATRIX REHABILITATION, INC., a
Corporation; SELECT SAN DIEGO PHYSICAL
16 THERAPY, P.C., a Professional Corporation; and
DOES 1 through 50, inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY 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 §§201-204, 233, 246.

DEMAND FOR A JURY TRIAL

1 Rachel Kortuem and Mary Aylward-Pell (“PLAINTIFFS”), individuals, on behalf of
2 themselves and all other similarly situated current and former employees allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge,
4 the following.

5
6 **THE PARTIES**

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

9 2. Select San Diego Physical Therapy, P.C. is a professional corporation that at all
10 relevant times mentioned herein conducted and continues to conduct substantial business in
11 California.

12 3. Matrix Rehabilitation, Inc. and Select San Diego Physical Therapy, P.C. (and any
13 DOE entities later named) are the joint employers of Plaintiff as evidenced by paycheck,
14 standardized company employment handbooks, by standardized policies and procedures, by the
15 company PLAINTIFF performs work for respectively and by the California Secretary of State
16 Business Information which includes but is not limited the same mailing and business addresses
17 and same agent for service of process, and are therefore jointly responsible as employers for the
18 conduct alleged herein, and are therefore collectively referred to herein as (“DEFENDANT”).

19 4. DEFENDANT provides physical therapy services in California.

20 5. Plaintiff Kortuem was employed by DEFENDANT in California from November
21 of 2022 to February 13, 2024. Plaintiff Kortuem was at all times classified by DEFENDANT
22 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and
23 rest periods and payment of minimum and overtime wages due for all time worked.

24 6. Plaintiff Aylward-Pell was employed by DEFENDANT in California from
25 September of 2021 to October of 2023. Plaintiff Aylward-Pell was at all times classified by
26 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
27 required meal and rest periods and payment of minimum and overtime wages due for all time
28 worked.

1 7. PLAINTIFFS bring this Class Action on behalf of themselves and a California
2 class, defined as all individuals who are or previously were employed by Matrix Rehabilitation,
3 Inc. and/or Select San Diego Physical Therapy, P.C. in California, including any employees
4 staffed with Matrix Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. by a
5 third party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
6 during the period beginning four (4) years prior to the filing of this Complaint and ending on
7 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD").

8 8. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
9 Members is under five million dollars (\$5,000,000.00).

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

21 10. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
23 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
25 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
26 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
27 information and belief allege, that the Defendants named in this Complaint, including DOES
28

1 1 through 50, inclusive, are responsible in some manner for one or more of the events and
2 happenings that proximately caused the injuries and damages hereinafter alleged.

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

11 **THE CONDUCT**

12 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
13 was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time
14 worked, meaning the time during which an employee is subject to the control of an
15 employer, including all the time the employee is suffered or permitted to work.
16 DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members to work
17 without paying them for all the time they are under DEFENDANT's control. Among other
18 things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is
19 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFFS were from time to time
20 interrupted by work assignments while clocked out for what should have been
21 PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company
22 policy and procedure, administers a uniform practice of rounding the actual time worked and
23 recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of
24 DEFENDANT, so that during the course of their employment, PLAINTIFFS and
25 CALIFORNIA CLASS Members are paid less than they would have been paid had they
26 been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT
27 engages in the practice of requiring PLAINTIFFS and CALIFORNIA CLASS Members to
28 perform work off the clock in that DEFENDANT, as a condition of employment, required

1 these employees to submit to mandatory temperature checks and symptom questionnaires for
2 COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the
3 workday. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit
4 minimum wage, overtime wage compensation, and off-duty meal breaks by working without
5 their time being correctly recorded and without compensation at the applicable rates.
6 DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA
7 CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

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

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

27 15. As a result of their rigorous work schedules, PLAINTIFFS and other
28 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute

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

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

1 back. Here, DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA
2 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
3 which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the
4 work premises during their rest period.

5 17. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
6 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
7 actual amount of time these employees worked. Pursuant to the Industrial Welfare
8 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and other
9 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
10 employee was subject to the control of an employer, including all the time the employee was
11 permitted or suffered to permit this work. DEFENDANT required these employees to work
12 off the clock without paying them for all the time they were under DEFENDANT's control.
13 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
14 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
15 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by
16 working without their time being accurately recorded and without compensation at the
17 applicable minimum wage and overtime wage rates. To the extent that the time worked off
18 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
19 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
20 1197, and 1197.1.

21 18. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
22 other members of the CALIFORNIA CLASS with complete and accurate wage statements
23 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
24 Code § 226 provides that every employer shall furnish each of his or her employees with an
25 accurate itemized wage statement in writing showing, among other things, gross wages
26 earned and all applicable hourly rates in effect during the pay period and the corresponding
27 amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA CLASS
28 Members were paid on an hourly basis. As such, the wage statements should reflect all

1 applicable hourly rates during the pay period and the total hours worked, and the applicable
2 pay period in which the wages were earned pursuant to California Labor Code Section
3 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and other
4 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
5 wage statements failed to identify the accurate total hours worked each pay period. When
6 the hours shown on the wage statements were added up, they did not equal the actual total
7 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
8 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS
9 an itemized wage statement that lists all the requirements under California Labor Code 226
10 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
11 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
12 § 226.

13 19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
14 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
15 the wages are paid not more than seven (7) calendar days following the close of the payroll
16 period. Cal. Lab. Code § 210 provides:

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

21 20. DEFENDANT from time to time failed to pay PLAINTIFFS and members of
22 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
23 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
24 the “Hourly” regular wage payments.

25 21. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
26 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
27 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
28 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate

1 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA
2 CLASS Members at their base rates of pay.

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

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

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

20 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
21 to collect or receive from an employee any part of wages theretofore paid by said employer
22 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and
23 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
24 compensation payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
25 Members, failed to disclose all aspects of the deductions from compensation payable to
26 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to
27 pay these employees all wages due at each applicable pay period and upon termination.
28 PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of

1 all illegal deductions from wages according to proof, related penalties, interest, attorney fees
2 and costs.

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

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

24 28. In violation of the applicable sections of the California Labor Code and the
25 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
26 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
27 knowingly and systematically failed to provide PLAINTIFFS and the other Aggrieved
28

1 Employees suitable seating when the nature of these employees' work reasonably permitted
2 sitting.

3 29. DEFENDANT knew or should have known that PLAINTIFFS and other
4 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
5 not interfere with the performance of their duties, and that DEFENDANT did not provide
6 suitable seating and/or did not allow them to sit when it did not interfere with the
7 performance of their duties.

8 30. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved
9 Employees, DEFENDANT violated California Labor Code Section 1198 and California
10 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
11 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties on
12 behalf of PLAINTIFFS and other Aggrieved Employees as provided herein. Providing
13 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
14 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
15 Code and regulations promulgated thereunder as herein alleged.

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

27 **JURISDICTION AND VENUE**
28

32. 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.

33. 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

34. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by Matrix Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. in California, including any employees staffed with Matrix Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. by a third party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

36. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally,

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

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

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

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

- 18 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
19 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
20 and/or deceptively having in place company policies, practices and
21 procedures that failed to record and pay PLAINTIFFS and the other
22 members of the CALIFORNIA CLASS for all time worked, including
23 minimum wages owed and overtime wages owed for work performed
24 by these employees; and,
- 25 (b) Committing an act of unfair competition in violation of the UCL, by
26 failing to provide the PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS with the legally required meal and rest periods.
28

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

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

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

3 41. 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 CLASS will create the risk of:

9 1) Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA CLASS which would establish
11 incompatible standards of conduct for the parties opposing the
12 CALIFORNIA CLASS; and/or,

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

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

23 1) With respect to the First Cause of Action, the final relief on
24 behalf of the CALIFORNIA CLASS sought does not relate
25 exclusively to restitution because through this claim
26 PLAINTIFFS seek declaratory relief holding that the
27 DEFENDANT's policy and practices constitute unfair
28 competition, along with declaratory relief, injunctive relief, and

1 incidental equitable relief as may be necessary to prevent and
2 remedy the conduct declared to constitute unfair competition;

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

9 1) The interests of the members of the CALIFORNIA CLASS in
10 individually controlling the prosecution or defense of separate
11 actions in that the substantial expense of individual actions will
12 be avoided to recover the relatively small amount of economic
13 losses sustained by the individual CALIFORNIA CLASS
14 Members when compared to the substantial expense and burden
15 of individual prosecution of this litigation;

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

18 A. Inconsistent or varying adjudications with respect to
19 individual members of the CALIFORNIA CLASS, which
20 would establish incompatible standards of conduct for the
21 DEFENDANT; and/or,

22 B. Adjudications with respect to individual members of the
23 CALIFORNIA CLASS would as a practical matter be
24 dispositive of the interests of the other members not
25 parties to the adjudication or substantially impair or
26 impede their ability to protect their interests;

27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA CLASS Members will avoid asserting

1 their legal rights out of fear of retaliation by DEFENDANT,
2 which may adversely affect an individual's job with
3 DEFENDANT or with a subsequent employer, the Class Action
4 is the only means to assert their claims through a representative;
5 and,

- 6 4) A class action is superior to other available methods for the fair
7 and efficient adjudication of this litigation because class
8 treatment will obviate the need for unduly and unnecessary
9 duplicative litigation that is likely to result in the absence of
10 certification of this action pursuant to Cal. Code of Civ. Proc. §
11 382.

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

- 14 (a) The questions of law and fact common to the CALIFORNIA CLASS
15 predominate over any question affecting only individual CALIFORNIA
16 CLASS Members because the DEFENDANT's employment practices
17 are applied with respect to the CALIFORNIA CLASS;
18 (b) A Class Action is superior to any other available method for the fair
19 and efficient adjudication of the claims of the members of the
20 CALIFORNIA CLASS because in the context of employment litigation
21 a substantial number of individual CALIFORNIA CLASS Members
22 will avoid asserting their rights individually out of fear of retaliation or
23 adverse impact on their employment;
24 (c) The members of the CALIFORNIA CLASS are so numerous that it is
25 impractical to bring all members of the CALIFORNIA CLASS before
26 the Court;

- 1 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
2 be able to obtain effective and economic legal redress unless the action
3 is maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
5 equitable relief for the acts of unfair competition, statutory violations
6 and other improprieties, and in obtaining adequate compensation for
7 the damages and injuries which DEFENDANT's actions have inflicted
8 upon the CALIFORNIA CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of
11 the CALIFORNIA CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally
13 applicable to the CALIFORNIA CLASS, thereby making final class-
14 wide relief appropriate with respect to the CALIFORNIA CLASS as a
15 whole;
- 16 (h) The members of the CALIFORNIA CLASS are readily ascertainable
17 from the business records of DEFENDANT; and,
- 18 (i) Class treatment provides manageable judicial treatment calculated to
19 bring a efficient and rapid conclusion to all litigation of all wage and
20 hour related claims arising out of the conduct of DEFENDANT as to
21 the members of the CALIFORNIA CLASS.

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

27
28 **THE CALIFORNIA LABOR SUB-CLASS**

1 44. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
2 Eighth, Ninth and Tenth causes Action on behalf of a California sub-class, defined as all
3 members of the CALIFORNIA CLASS who are or previously were employed by Matrix
4 Rehabilitation, Inc. and/or Select San Diego Physical Therapy, P.C. in California, including
5 any employees staffed with Matrix Rehabilitation, Inc. and/or Select San Diego Physical
6 Therapy, P.C. by a third party, and classified as non-exempt employees (the “CALIFORNIA
7 LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of
8 the complaint and ending on the date as determined by the Court (the “CALIFORNIA
9 LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in
10 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
11 under five million dollars (\$5,000,000.00).

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

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

1 47. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
2 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

18 49. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
19 CLASS under California law by:

- 20 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
21 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
22 CLASS all wages due for overtime worked, for which DEFENDANT is
23 liable pursuant to Cal. Lab. Code § 1194;
- 24 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
25 accurately pay PLAINTIFFS and the members of the CALIFORNIA
26 LABOR SUB-CLASS the correct minimum wage pay for which
27 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 28

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

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

- 21 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
22 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
23 CLASS Members is impracticable and the disposition of their claims as
24 a class will benefit the parties and the Court;
- 25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
26 issues that are raised in this Complaint are common to the
27 CALIFORNIA LABOR SUB-CLASS and will apply to every member
28 of the CALIFORNIA LABOR SUB-CLASS;

- 1 (c) The claims of the representative PLAINTIFFS are typical of the claims
2 of each member of the CALIFORNIA LABOR SUB-CLASS.
3 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
4 SUB-CLASS, were non-exempt employees paid on an hourly basis who
5 were subjected to the DEFENDANT's practice and policy which failed
6 to pay the correct amount of wages due to the CALIFORNIA LABOR
7 SUB-CLASS. PLAINTIFFS sustained economic injury as a result of
8 DEFENDANT's employment practices. PLAINTIFFS and the
9 members of the CALIFORNIA LABOR SUB-CLASS were and are
10 similarly or identically harmed by the same unlawful, deceptive, and
11 unfair misconduct engaged in by DEFENDANT; and,
- 12 (d) The representative PLAINTIFFS will fairly and adequately represent
13 and protect the interest of the CALIFORNIA LABOR SUB-CLASS,
14 and have retained counsel who are competent and experienced in Class
15 Action litigation. There are no material conflicts between the claims of
16 the representative PLAINTIFFS and the members of the
17 CALIFORNIA LABOR SUB-CLASS that would make class
18 certification inappropriate. Counsel for the CALIFORNIA LABOR
19 SUB-CLASS will vigorously assert the claims of all CALIFORNIA
20 LABOR SUB-CLASS Members.

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

- 23 (a) Without class certification and determination of declaratory, injunctive,
24 statutory and other legal questions within the class format, prosecution
25 of separate actions by individual members of the CALIFORNIA
26 LABOR SUB-CLASS will create the risk of:
- 27 1) Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA LABOR SUB-CLASS which

1 would establish incompatible standards of conduct for the
2 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

8 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
9 acted or refused to act on grounds generally applicable to the
10 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
11 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
12 whole in that DEFENDANT fails to pay all wages due. Including the
13 correct wages for all time worked by the members of the
14 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

1 to the substantial expense and burden of individual prosecution
2 of this litigation;

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

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

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

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

21 4) A class action is superior to other available methods for the fair
22 and efficient adjudication of this litigation because class
23 treatment will obviate the need for unduly and unnecessary
24 duplicative litigation that is likely to result in the absence of
25 certification of this action pursuant to Cal. Code of Civ. Proc. §
26 382.

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

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members who worked for DEFENDANT in California at any
5 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
6 (i) Class treatment provides manageable judicial treatment calculated to
7 bring a efficient and rapid conclusion to all litigation of all wage and
8 hour related claims arising out of the conduct of DEFENDANT as to
9 the members of the CALIFORNIA LABOR SUB-CLASS.

10 **FIRST CAUSE OF ACTION**

11 **For Unlawful Business Practices**

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

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

14 53. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
15 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
16 this Complaint.

17 54. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
18 Code § 17021.

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

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

Cal. Bus. & Prof. Code § 17203.

1 56. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Industrial Wage Order(s), the California Code of Regulations and the California
4 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
5 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
6 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
7 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
8 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

27 59. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
28 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS

1 and the other members of the CALIFORNIA CLASS to be underpaid during their
2 employment with DEFENDANT.

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

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

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

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

21 64. All the acts described herein as violations of, among other things, the
22 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
23 California Labor Code, were unlawful and in violation of public policy, were immoral,
24 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
25 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
26 *seq.*

27 65. PLAINTIFFS and the other members of the CALIFORNIA CLASS are
28 entitled to, and do, seek such relief as may be necessary to restore to them the money and

1 property which DEFENDANT has acquired, or of which PLAINTIFFS and the other
2 members of the CALIFORNIA CLASS have been deprived, by means of the above
3 described unlawful and unfair business practices, including earned but unpaid wages for all
4 time worked.

5 66. PLAINTIFFS and the other members of the CALIFORNIA CLASS are
6 further entitled to, and do, seek a declaration that the described business practices are
7 unlawful, unfair and deceptive, and that injunctive relief should be issued restraining
8 DEFENDANT from engaging in any unlawful and unfair business practices in the future.

9 67. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no
10 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
11 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
12 unabated. As a result of the unlawful and unfair business practices described herein,
13 PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will
14 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
15 from continuing to engage in these unlawful and unfair business practices.

16
17 **SECOND CAUSE OF ACTION**

18 **For Failure To Pay Minimum Wages**

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

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

21 **and Against All Defendants)**

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

25 69. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
26 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
27 California Labor Code and the Industrial Welfare Commission requirements for
28

1 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS
2 and CALIFORNIA CLASS Members.

3 70. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
4 public policy, an employer must timely pay its employees for all hours worked.

5 71. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
6 the commission is the minimum wage to be paid to employees, and the payment of a less
7 wage than the minimum so fixed is unlawful.

8 72. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
9 wages, including minimum wage compensation and interest thereon, together with the costs
10 of suit.

11 73. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the
12 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
14 unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
15 other members of the CALIFORNIA LABOR SUB-CLASS.

16 74. DEFENDANT's unlawful wage and hour practices manifested, without
17 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
18 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and
19 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
20 wage pay.

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

27 76. As a direct result of DEFENDANT's unlawful wage practices as alleged
28 herein, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS

1 did not receive the correct minimum wage compensation for their time worked for
2 DEFENDANT.

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

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

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

22 80. In performing the acts and practices herein alleged in violation of California
23 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
24 CLASS for all time worked and provide them with the requisite compensation,
25 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
26 toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
27 with a conscious and utter disregard for their legal rights, or the consequences to them, and
28

1 with the despicable intent of depriving them of their property and legal rights, and otherwise
2 causing them injury in order to increase company profits at the expense of these employees.

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

15
16 **THIRD CAUSE OF ACTION**

17 **For Failure To Pay Overtime Compensation**

18 **[Cal. Lab. Code § 510]**

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

21 82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
22 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
23 paragraphs of this Complaint.

24 83. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
25 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
26 California Labor Code and the Industrial Welfare Commission requirements for
27 DEFENDANT's failure to pay these employees for all overtime worked, including, work
28

1 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
2 and/or forty (40) hours in any workweek.

3 84. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
4 public policy, an employer must timely pay its employees for all hours worked.

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

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

14 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
15 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
16 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
17 including overtime work.

18 88. DEFENDANT's unlawful wage and hour practices manifested, without
19 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
20 implementing a policy and practice that failed to accurately record overtime worked by
21 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
22 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
23 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in
24 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty
25 (40) hours in any workweek.

26 89. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT

1 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
2 violation of the California Labor Code, the Industrial Welfare Commission requirements
3 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
4 wage practices as alleged herein, the PLAINTIFFS and the other members of the
5 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
6 worked.

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

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

18 92. DEFENDANT failed to accurately pay the PLAINTIFFS and the other
19 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
20 worked which was in excess of the maximum hours permissible by law as required by Cal.
21 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFFS and the other members of the
22 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
23 as to which DEFENDANT failed to accurately record and pay as evidenced by
24 DEFENDANT's business records and witnessed by employees.

25 93. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
26 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true amount of time they worked, PLAINTIFFS and the other members of
28 the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an

1 economic injury in amounts which are presently unknown to them and which will be
2 ascertained according to proof at trial.

3 94. DEFENDANT knew or should have known that PLAINTIFFS and the other
4 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
5 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
6 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
7 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
8 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

18 96. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
19 CLASS therefore request recovery of all overtime wages, according to proof, interest,
20 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
21 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
22 extent minimum and/or overtime compensation is determined to be owed to the
23 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
24 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
25 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
26 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
27 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
28

1 good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
2 Members are entitled to seek and recover statutory costs.

3
4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

12 98. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
13 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
14 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
15 and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA
16 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
17 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
18 work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members
19 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
20 Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA
21 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
22 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
23 DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a
24 second off-duty meal period in some workdays in which these employees were required by
25 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFFS
26 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
27 breaks without additional compensation and in accordance with DEFENDANT's strict
28 corporate policy and practice.

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

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

10
11 **FIFTH CAUSE OF ACTION**

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

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

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

16 101. PLAINTIFF, 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.

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

1 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically
2 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

12 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

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

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

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

- 22 (1) gross wages earned,
- 23 (2) total hours worked by the employee, except for any employee whose
24 compensation is solely based on a salary and who is exempt from payment of
25 overtime under subdivision (a) of Section 515 or any applicable order of the
26 Industrial Welfare Commission,
- 27 (3) the number of piece-rate units earned and any applicable piece rate if the employee
28 is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by
January 1, 2008, only the last four digits of his or her social security number or an

1 employee identification number other than a social security number may be shown on
2 the itemized statement,
3 (8) the name and address of the legal entity that is the employer, and
4 (9) all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

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

26 108. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
27 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
expended calculating the correct wages for all missed meal and rest breaks and the amount
of employment taxes which were not properly paid to state and federal tax authorities.

1 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
2 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
3 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
4 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
5 226, in an amount according to proof at the time of trial (but in no event more than four
6 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
7 CALIFORNIA LABOR SUB-CLASS herein).

8
9 **SEVENTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 2802]**

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

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

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

18 An employer shall indemnify his or her employee for all necessary
19 expenditures or losses incurred by the employee in direct consequence of the
20 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.

21 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
22 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
23 CLASS members for required expenses incurred in the discharge of their job duties for
24 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
25 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
26 limited to, costs related to using their personal cellular phones on behalf of and for the
27 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
28

1 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
2 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
3 and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
4 CLASS members for expenses resulting from using their personal cellular phones and home
5 offices for DEFENDANT within the course and scope of their employment for
6 DEFENDANT. These expenses were necessary to complete their principal job duties.
7 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
8 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS
9 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
10 and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
11 these expenses as an employer is required to do under the laws and regulations of California.

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

16 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

25 As used in this article:

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

27 (b) "Labor" includes labor, work, or service whether rendered or
28 performed under contract, subcontract, partnership, station plan, or other

1 agreement if the labor to be paid for is performed personally by the person
2 demanding payment.

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

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

7 If an employee not having a written contract for a definite period quits his
8 or her employment, his or her wages shall become due and payable not
9 later than 72 hours thereafter, unless the employee has given 72 hours
10 previous notice of his or her intention to quit, in which case the employee
11 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.

12 116. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR
13 SUB-CLASS Members’ employment contract.

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

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

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

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

27 119. Therefore, as provided by Cal Lab. Code § 203, on behalf of PLAINTIFF and
28 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has

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

6
7 **NINTH CAUSE OF ACTION**

8 **For Failure to Pay Sick Pay Wages**

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

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

11 **and Against All Defendants)**

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

15 121. Cal Lab. Code § 233 provides that an employer must permit an employee to
16 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
17 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
18 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
19 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
20 right to sick pay wages, which an employer must calculate and compensate based on one of
21 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
22 same manner as the regular rate of pay for the workweek in which the employee uses paid
23 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
24 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
25 total wages, not including overtime premium pay, by the employee's total hours worked in
26 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
27 233, employees may sue to recover underpaid sick pay wages as damages.

28 122. As a matter of policy and practice, DEFENDANT pays sick pay wages to

1 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the
2 incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-
3 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
4 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
5 wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS
6 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
7 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
8 employee's total wages, not including overtime premium pay, by the employee's total hours
9 worked in the full pay periods of the prior 90 days of employment. As a result,
10 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
11 CALIFORNIA LABOR-SUB-CLASS.

12 123. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
13 during each calendar month and are to be paid no later than the payday for the next regular
14 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
15 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
16 no later than the payday for the next regular payroll period after accrued sick leave is used as
17 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
18 employee, wages earned and unpaid at the time of discharge are due and payable
19 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
20 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
21 the employee has given 72-hour notice of his or her intention to quit, in which case the
22 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
23 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
24 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
25 wages of the employee shall continue as a penalty from the due date, and at the same rate
26 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
27 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
28

1 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
2 sue to recover applicable penalties.

3 124. As alleged herein and as a matter of policy and practice, DEFENDANT
4 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
5 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
6 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
7 among other Labor Code provisions. PLAINTIFFS are informed and believe that
8 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
9 mandates of the Labor Code as it relates to PLAINTIFFS' allegations, especially since the
10 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
11 include those benefits to which an employee is entitled as a part of his or her compensation,
12 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
13 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
14 willfully fails to timely pay PLAINTIFFS and the other members of the CALIFORNIA
15 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
16 penalties.

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

21 22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
24 severally, as follows:

25 1. On behalf of the CALIFORNIA CLASS:

26 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
27 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
28

- 1 B) An order temporarily, preliminarily and permanently enjoining and restraining
2 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
3 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
4 withheld from compensation due to PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS; and,
6 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
7 for restitution of the sums incidental to DEFENDANT's violations due to
8 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- 10 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
11 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
12 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
13 B) Compensatory damages, according to proof at trial, including compensatory
14 damages for minimum and overtime compensation due PLAINTIFFS and the
15 other members of the CALIFORNIA LABOR SUB-CLASS, during the
16 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
17 at the statutory rate;
18 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
19 in which a violation occurs and one hundred dollars (\$100) per each member of
20 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
21 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
22 an award of costs for violation of Cal. Lab. Code § 226;
23 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
25 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
26 1197;
27
28

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

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

7 3. On all claims:

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

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

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

13 Dated: April 1, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

14
15 By: _____
16 Norman B. Blumenthal
Nicholas J. De Blouw

17 *Attorneys for Plaintiffs*
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DEMAND FOR A JURY TRIAL

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

Dated: April 1, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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