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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

VICTOR FERNANDEZ and JENNIFER
SANDOVAL ESCAMILLA, individuals, on
behalf of themselves, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

BLACKSTONE CONSULTING, INC., a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CVRI2402664

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR A JURY TRIAL

1 Victor Fernandez and Jennifer Sandoval Escamilla (“PLAINTIFFS”), individuals, on
2 behalf of themselves and all other similarly situated current and former employees allege on
3 information and belief, except for his own acts and knowledge which are based on personal
4 knowledge, the following.

5
6 **THE PARTIES**

7 1. Blackstone Consulting, Inc. (“DEFENDANT”) is a Corporation that at all relevant
8 times mentioned herein conducted and continues to conduct substantial business in California.

9 2. DEFENDANT provides security guard services in California.

10 3. Plaintiff Victor Fernandez was employed by DEFENDANT in California from
11 July of 2022 to March of 2023. PLAINTIFF was at all times classified by DEFENDANT as
12 a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and
13 rest periods and payment of minimum and overtime wages due for all time worked.

14 4. Plaintiff Jennifer Sandoval Escamilla was employed by DEFENDANT in
15 California from June of 2024 to August of 2024. PLAINTIFF was at all times classified by
16 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
17 required meal and rest periods and payment of minimum and overtime wages due for all time
18 worked.

19 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
20 class, defined as all individuals who are or previously were employed by DEFENDANT in
21 California, including any employees staffed with DEFENDANT by a third party, and classified
22 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
23 beginning four (4) years prior to the filing of this Complaint and ending on the date as
24 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
25 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
26 (\$5,000,000.00).

27 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their

1 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's
2 policy and practice which failed to lawfully compensate these employees. DEFENDANT's
3 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
4 whereby DEFENDANT retained and continues to retain wages due to PLAINTIFFS and the
5 other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
7 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA
8 CLASS who have been economically injured by DEFENDANT's past and current unlawful
9 conduct, and all other appropriate legal and equitable relief.

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

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

27
28 **THE CONDUCT**

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

26 10. State and federal law provides that employees must be paid overtime and meal
27 and rest break premiums at one-and-one-half times their "regular rate of pay."
28

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

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

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

1 therefore forfeit meal breaks without additional compensation and in accordance with
2 DEFENDANT's corporate policy and practice.

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

24 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
25 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
26 actual amount of time these employees worked. Pursuant to the Industrial Welfare
27 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and other
28 CALIFORNIA CLASS Members for all time worked, meaning the time during which an

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

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

1 As a result, DEFENDANT from time to time provided PLAINTIFFS and the other members
2 of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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

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

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

26 20. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
27 to collect or receive from an employee any part of wages theretofore paid by said employer
28

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

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

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

1 costs related to the use of their personal cellular phones all on behalf of and for the benefit of
2 DEFENDANT.

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

14 **JURISDICTION AND VENUE**

15 24. This Court has jurisdiction over this Action pursuant to California Code of
16 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
17 17203. This action is brought as a Class Action on behalf of PLAINTIFFS and similarly
18 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

25 **THE CALIFORNIA CLASS**

26 26. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
27 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, (the "UCL") as
28

1 a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,
2 defined as all individuals who are or previously were employed by DEFENDANT in
3 California, including any employees staffed with DEFENDANT by a third party, and
4 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
5 period beginning four (4) years prior to the filing of this Complaint and ending on the date
6 as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
7 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
8 million dollars (\$5,000,000.00).

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

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

19 29. DEFENDANT has the legal burden to establish that each and every
20 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
21 required by California laws. The DEFENDANT, however, as a matter of policy and
22 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
23 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
24 Member is paid as required by law. This common business practice is applicable to each
25 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
26 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, (the
27 “UCL”) as causation, damages, and reliance are not elements of this claim.
28

1 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 31. DEFENDANT violated the rights of the CALIFORNIA CLASS under
4 California law by:

5 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
6 Prof. Code §§ 17200, (the "UCL"), by unlawfully, unfairly and/or
7 deceptively having in place company policies, practices and procedures
8 that failed to record and pay PLAINTIFF and the other members of the
9 CALIFORNIA CLASS for all time worked, including minimum wages
10 owed and overtime wages owed for work performed by these
11 employees; and,

12 (b) Committing an act of unfair competition in violation of the UCL, by
13 failing to provide the PLAINTIFF and the other members of the
14 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

24 (c) The claims of the representative PLAINTIFF are typical of the claims
25 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
26 the other members of the CALIFORNIA CLASS, were classified as
27 non-exempt employees paid on an hourly basis who were subjected to
28 the DEFENDANT's deceptive practice and policy which failed to

1 provide the legally required meal and rest periods to the CALIFORNIA
2 CLASS and thereby underpaid compensation to PLAINTIFF and
3 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
4 result of DEFENDANT's employment practices. PLAINTIFF and the
5 members of the CALIFORNIA CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive and unfair
7 misconduct engaged in by DEFENDANT; and,

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

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

- 18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution
20 of separate actions by individual members of the CALIFORNIA
21 CLASS will create the risk of:
- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
 - 26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
28 dispositive of interests of the other members not party to the

1 adjudication or substantially impair or impede their ability to
2 protect their interests.

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

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

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

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

Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

- 1 (h) The members of the CALIFORNIA CLASS are readily ascertainable
2 from the business records of DEFENDANT; and,
- 3 (i) Class treatment provides manageable judicial treatment calculated to
4 bring a efficient and rapid conclusion to all litigation of all wage and
5 hour related claims arising out of the conduct of DEFENDANT as to
6 the members of the CALIFORNIA CLASS.

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

12

13 **THE CALIFORNIA LABOR SUB-CLASS**

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

24 37. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
25 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
26 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
27 failed to correctly calculate compensation for the time worked by PLAINTIFFS and the
28 other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed

1 to these employees, even though DEFENDANT enjoyed the benefit of this work, required
2 employees to perform this work and permitted or suffered to permit this work.
3 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
4 which these employees are entitled in order to unfairly cheat the competition and unlawfully
5 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
6 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
7 should be adjusted accordingly.

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

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

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

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

1 (e) Whether DEFENDANT's conduct was willful.

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

- 4 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
5 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
6 CLASS all wages due for overtime worked, for which DEFENDANT is
7 liable pursuant to Cal. Lab. Code § 1194;
- 8 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1, by failing to
9 accurately pay PLAINTIFF and the members of the CALIFORNIA
10 LABOR SUB-CLASS the correct minimum wage pay for which
11 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 12 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
13 the members of the CALIFORNIA LABOR SUB-CLASS with an
14 accurate itemized statement in writing showing the corresponding
15 correct amount of wages earned by the employee;
- 16 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
17 PLAINTIFF and the other members of the CALIFORNIA LABOR
18 SUB-CLASS with all legally required off-duty, uninterrupted thirty
19 (30) minute meal breaks and the legally required off-duty rest breaks;
- 20 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
21 when an employee is discharged or quits from employment, the
22 employer must pay the employee all wages due without abatement, by
23 failing to tender full payment and/or restitution of wages owed or in the
24 manner required by California law to the members of the
25 CALIFORNIA LABOR SUB-CLASS who have terminated their
26 employment; and,
- 27
28

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

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

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

1 the representative PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS that would make class certification
3 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
4 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
5 CLASS Members.

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

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

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

21 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
22 acted or refused to act on grounds generally applicable to the
23 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
24 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
25 whole in that DEFENDANT fails to pay all wages due. Including the
26 correct wages for all time worked by the members of the
27 CALIFORNIA LABOR SUB-CLASS as required by law;
28

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

8 1) The interests of the members of the CALIFORNIA LABOR
9 SUB-CLASS in individually controlling the prosecution or
10 defense of separate actions in that the substantial expense of
11 individual actions will be avoided to recover the relatively small
12 amount of economic losses sustained by the individual
13 CALIFORNIA LABOR SUB-CLASS Members when compared
14 to the substantial expense and burden of individual prosecution
15 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 LABOR SUB-
20 CLASS, which would establish incompatible standards of
21 conduct for the DEFENDANT; and/or,

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

27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA LABOR SUB-CLASS Members will

1 avoid asserting their legal rights out of fear of retaliation by
2 DEFENDANT, which may adversely affect an individual's job
3 with DEFENDANT or with a subsequent employer, the Class
4 Action is the only means to assert their claims through a
5 representative; 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 44. 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 LABOR
15 SUB-CLASS predominate over any question affecting only individual
16 CALIFORNIA LABOR SUB-CLASS Members;
- 17 (b) A Class Action is superior to any other available method for the fair
18 and efficient adjudication of the claims of the members of the
19 CALIFORNIA LABOR SUB-CLASS because in the context of
20 employment litigation a substantial number of individual
21 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
22 their rights individually out of fear of retaliation or adverse impact on
23 their employment;
- 24 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
25 numerous that it is impractical to bring all members of the
26 CALIFORNIA LABOR SUB-CLASS before the Court;
- 27
28

- 1 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
2 Members, will not be able to obtain effective and economic legal
3 redress unless the action 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 the
7 damages and injuries which DEFENDANT's actions have inflicted
8 upon the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally
13 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
14 making final class-wide relief appropriate with respect to the
15 CALIFORNIA LABOR SUB-CLASS as a whole;
- 16 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
17 ascertainable from the business records of DEFENDANT. The
18 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
19 CLASS Members who worked for DEFENDANT in California at any
20 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 21 (i) Class treatment provides manageable judicial treatment calculated to
22 bring a efficient and rapid conclusion to all litigation of all wage and
23 hour related claims arising out of the conduct of DEFENDANT as to
24 the members of the CALIFORNIA LABOR SUB-CLASS.

25
26 **FIRST CAUSE OF ACTION**

27 **For Unlawful Business Practices**

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

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

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

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

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

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

19 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

1 65. DEFENDANT's unlawful wage and hour practices manifested, without
2 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
3 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and
4 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
5 wage pay.

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

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

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

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

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

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

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

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

27
28 **THIRD CAUSE OF ACTION**

1 **For Failure To Pay Overtime Compensation**

2 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

17
18 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

18 **SIXTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 226]**

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

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

26 96. Cal. Labor Code § 226 provides that an employer must furnish employees
27 with
28 an "accurate itemized" statement in writing showing:

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

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

1 time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
2 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

15
16 **SEVENTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

5 As used in this article:

6 (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.

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

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

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

13 If an employee not having a written contract for a definite period quits his
or her employment, his or her wages shall become due and payable not
14 later than 72 hours thereafter, unless the employee has given 72 hours
previous notice of his or her intention to quit, in which case the employee
15 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-
16 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
17 constitute the date of payment for purposes of the requirement to provide
payment within 72 hours of the notice of quitting.

18 106. There was no definite term in PLAINTIFFS's or any CALIFORNIA LABOR
19 SUB-CLASS Members' employment contract.

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

21 If an employer willfully fails to pay, without abatement or reduction, in
22 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
employee who is discharged or who quits, the wages of the employee shall
23 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
24 for more than 30 days.

25 108. The employment of PLAINTIFFS, and many CALIFORNIA LABOR
26 SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all
27 wages owed as required by law. Additionally, at all times during the term of PLAINTIFFS's
28 employment with DEFENDANT, PLAINTIFFS, and CALIFORNIA LABOR SUB-CLASS

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

1 PLAINTIFFS, and the members of the CALIFORNIA LABOR SUB-CLASS.
2 DEFENDANT's uniform practice and policy of failing to pay the LABOR SUB-CLASS
3 Members for all vested vacation and holiday time accumulated at employment termination
4 violated and continues to violate Section 227.3 of the California Labor Code.

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

12 **NINTH CAUSE OF ACTION**

13 **For Failure to Pay Sick Pay Wages**

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

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

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

20 111. Cal Lab. Code § 233 provides that an employer must permit an employee to
21 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
22 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
23 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
24 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
25 right to sick pay wages, which an employer must calculate and compensate based on one of
26 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
27 same manner as the regular rate of pay for the workweek in which the employee uses paid
28

1 sick time, whether or not the employee actually works overtime in that workweek,” or (ii)
2 “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s
3 total wages, not including overtime premium pay, by the employee’s total hours worked in
4 the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218 and
5 233, employees may sue to recover underpaid sick pay wages as damages.

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

18 113. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick
19 leave, vested sick pay wages are due and to be paid no later than the payday for the next
20 regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab.
21 Code § 201 provides that if an employer discharges an employee, wages earned and unpaid
22 at the time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides
23 that an employee is entitled to receive all unpaid wages no later than 72 hours after an
24 employee quits his or her employment, unless the employee has given 72-hour notice of his
25 or her intention to quit, in which case the employee is entitled to his or her wages at the time
26 of quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code §
27 203 provides that if an employer willfully fails to pay wages owed in accordance with Cal.
28 Lab. Code §§ 201-202, then the wages of the employee shall continue as a penalty from the

1 due date, and at the same rate until paid, but the wages shall not continue for more than
2 thirty (30) days. Under Cal. Lab. Code §§ 203 and 218, employees may sue to recover
3 applicable penalties.

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

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

22 23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFFS prays for judgment against each Defendant, jointly and
25 severally, as follows:

26 1. On behalf of the CALIFORNIA CLASS:

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

- 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: December 16, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

14
15 By: /s/ Nicholas J. De Blouw

16 Norman B. Blumenthal
17 Nicholas J. De Blouw

18 *Attorneys for Plaintiffs*
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DEMAND FOR A JURY TRIAL

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

Dated: December 16, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

VICTOR FERNANDEZ, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

BLACKSTONE CONSULTING, INC., a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CVRI2402664

CLASS ACTION

PROOF OF SERVICE

Action Filed: May 15, 2024

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Yesenia Silva, am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On December 16, 2024, I served the document(s) described as:

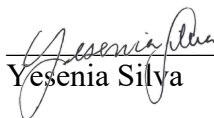
1. FIRST AMENDED CLASS ACTION COMPLAINT

X **(BY ELECTRONIC SERVICE):** I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

PANKIT DOSHI (SBN 231369)
pdoshi@mwe.com
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X **(State):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 16, 2024, at San Diego, California.



Yesenia Silva