

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

Piya Mukherjee (State Bar #274217)

piya@bamlawca.com

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiffs

FILED

Superior Court of California
County of Los Angeles

06/04/2025

David W. Saybri, Executive Officer/Clerk of Court

By: T. Carter Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

STERLING CARR, AZIRAH BLAKE, SARAH
DAVENPORT, and GISELLE URBINA,
individuals, on behalf of themselves and on behalf
of all persons similarly situated,

Plaintiffs,

vs.

2ND STREET USA, INC., a Corporation; 2ND
STREET RETAILERS, a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 24STCV12806

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-203, 233, 246;
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, et seq.];
11. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
12. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, et seq.; and
13. DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA.

DEMAND FOR A JURY TRIAL

1 Sterling Carr, Azirah Blake, Sarah Davenport, and Giselle Urbina (“PLAINTIFFS”),
2 individuals, on behalf of themselves and all other similarly situated current and former
3 employees, allege on information and belief, except for their own acts and knowledge which
4 are based on personal knowledge, the following.

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6 **THE PARTIES**

7 1. 2nd Street USA, Inc. is a corporation that at all relevant times mentioned herein
8 conducted and continues to conduct substantial business in California.

9 2. 2nd Street Retailers is a corporation that at all relevant times mentioned herein
10 conducted and continues to conduct substantial business in California.

11 3. 2nd Street USA, Inc. and 2nd Street Retailers were the joint employers of Plaintiff
12 as evidenced by paycheck and by the company PLAINTIFF performs work for respectively, and
13 are therefore jointly responsible as employers for the conduct alleged herein, and are therefore
14 collectively referred to herein as (“DEFENDANT”).

15 4. DEFENDANT owns and operates second hand clothing stores in California

16 5. Plaintiff Carr was employed by DEFENDANT in California from April 2, 2023
17 to October 24, 2023 and was at all times classified by DEFENDANT as a non-exempt
18 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
19 payment of minimum and overtime wages due for all time worked.

20 6. Plaintiff Blake was employed by DEFENDANT in California from October of
21 2023 to July of 2024 and was at all times classified by DEFENDANT as a non-exempt
22 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
23 payment of minimum and overtime wages due for all time worked.

24 7. Plaintiff Davenport was employed by DEFENDANT in California from February
25 of 2024 to July of 2024 and was at all times classified by DEFENDANT as a non-exempt
26 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
27 payment of minimum and overtime wages due for all time worked.
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1 8. Plaintiff Urbina was employed by DEFENDANT in California from August of
2 2020 to April of 2023 and was at all times classified by DEFENDANT as a non-exempt
3 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
4 payment of minimum and overtime wages due for all time worked.

5 9. PLAINTIFFS bring this Class Action on behalf of themselves and a California
6 class, defined as all individuals who are or previously were employed by 2nd Street USA, Inc.
7 and/or 2nd Street Retailers in California, including any employees staffed with 2nd Street USA,
8 Inc. and/or 2nd Street Retailers by a third party, and classified as non-exempt employees (the
9 “CALIFORNIA CLASS”) at any time during the period beginning May 21, 2020 and ending
10 on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount
11 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
12 dollars (\$5,000,000.00).

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

24 11. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
26 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious
27 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
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1 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
2 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
3 information and belief allege, that the Defendants named in this Complaint, including DOES
4 1 through 50, inclusive, are responsible in some manner for one or more of the events and
5 happenings that proximately caused the injuries and damages hereinafter alleged.

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

14 15 **THE CONDUCT**

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

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

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

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

18 17. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
19 CALIFORNIA CLASS Members were also required from time to time to work in excess of
20 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
21 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
22 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
23 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
24 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
25 worked of ten (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA
26 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
27 the applicable California Wage Order requires employers to provide employees with off-
28 duty rest periods, which the California Supreme Court defined as time during which an

1 employee is relieved from all work related duties and free from employer control. In so
2 doing, the Court held that the requirement under California law that employers authorize and
3 permit all employees to take rest period means that employers must relieve employees of all
4 duties and relinquish control over how employees spend their time which includes control
5 over the locations where employees may take their rest period. Employers cannot impose
6 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
7 back. Here, DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA
8 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
9 which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the
10 work premises during their rest period.

11 18. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
12 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
13 actual amount of time these employees worked. Pursuant to the Industrial Welfare
14 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and other
15 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
16 employee was subject to the control of an employer, including all the time the employee was
17 permitted or suffered to permit this work. DEFENDANT required these employees to work
18 off the clock without paying them for all the time they were under DEFENDANT's control.
19 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
21 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by
22 working without their time being accurately recorded and without compensation at the
23 applicable minimum wage and overtime wage rates. To the extent that the time worked off
24 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
25 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
26 1197, and 1197.1.

27 19. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
28 other members of the CALIFORNIA CLASS with complete and accurate wage statements

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

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

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

1 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
2 at the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely
3 earned non-discretionary incentive wages which increased their regular rate of pay.
4 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and
5 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
6 as required under Cal. Lab. Code Section 246.

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

14 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
15 to collect or receive from an employee any part of wages theretofore paid by said employer
16 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and
17 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
18 compensation payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
19 Members, failed to disclose all aspects of the deductions from compensation payable to
20 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to
21 pay these employees all wages due at each applicable pay period and upon termination.
22 PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of
23 all illegal deductions from wages according to proof, related penalties, interest, attorney fees
24 and costs.

25 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
27 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct
28 consequence of discharging their duties on behalf of DEFENDANT. Under California

1 Labor Code Section 2802, employers are required to indemnify employees for all expenses
2 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
3 states that "an employer shall indemnify his or her employee for all necessary expenditures
4 or losses incurred by the employee in direct consequence of the discharge of his or her
5 duties, or of his or her obedience to the directions of the employer, even though unlawful,
6 unless the employee, at the time of obeying the directions, believed them to be unlawful."

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

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

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JURISDICTION AND VENUE

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

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

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THE CALIFORNIA CLASS

30. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by 2nd Street USA, Inc. and/or 2nd Street Retailers in California, including any employees staffed with 2nd Street USA, Inc. and/or 2nd Street Retailers by a third party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning May 21, 2020 and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

17 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under
20 California law by:

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

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

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

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

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

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

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

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

25 1) With respect to the First Cause of Action, the final relief on
26 behalf of the CALIFORNIA CLASS sought does not relate
27 exclusively to restitution because through this claim
28 PLAINTIFFS seek declaratory relief holding that the

1 DEFENDANT's policy and practices constitute unfair
2 competition, along with declaratory relief, injunctive relief, and
3 incidental equitable relief as may be necessary to prevent and
4 remedy the conduct declared to constitute unfair competition;

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

- 11 1) The interests of the members of the CALIFORNIA CLASS in
12 individually controlling the prosecution or defense of separate
13 actions in that the substantial expense of individual actions will
14 be avoided to recover the relatively small amount of economic
15 losses sustained by the individual CALIFORNIA CLASS
16 Members when compared to the substantial expense and burden
17 of individual prosecution of this litigation;
- 18 2) Class certification will obviate the need for unduly duplicative
19 litigation that would create the risk of:
 - 20 A. Inconsistent or varying adjudications with respect to
21 individual members of the CALIFORNIA CLASS, which
22 would establish incompatible standards of conduct for the
23 DEFENDANT; and/or,
 - 24 B. Adjudications with respect to individual members of the
25 CALIFORNIA CLASS would as a practical matter be
26 dispositive of the interests of the other members not
27 parties to the adjudication or substantially impair or
28 impede their ability to protect their interests;

- 1 3) In the context of wage litigation because a substantial number of
2 individual CALIFORNIA CLASS Members will avoid asserting
3 their legal rights out of fear of retaliation by DEFENDANT,
4 which may adversely affect an individual's job with
5 DEFENDANT or with a subsequent employer, the Class Action
6 is the only means to assert their claims through a representative;
7 and,
8 4) A class action is superior to other available methods for the fair
9 and efficient adjudication of this litigation because class
10 treatment will obviate the need for unduly and unnecessary
11 duplicative litigation that is likely to result in the absence of
12 certification of this action pursuant to Cal. Code of Civ. Proc. §
13 382.

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

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

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

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

27 //

28 //

THE CALIFORNIA LABOR SUB-CLASS

40. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by 2nd Street USA, Inc. and/or 2nd Street Retailers in California, including any employees staffed with 2nd Street USA, Inc. and/or 2nd Street Retailers by a third party, and classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning May 21, 2021 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

- 24 (a) Without class certification and determination of declaratory, injunctive,
25 statutory and other legal questions within the class format, prosecution
26 of separate actions by individual members of the CALIFORNIA
27 LABOR SUB-CLASS will create the risk of:
28

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

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

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

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual

CALIFORNIA LABOR SUB-CLASS 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 LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-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 LABOR SUB-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.

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

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

1 making final class-wide relief appropriate with respect to the
2 CALIFORNIA LABOR SUB-CLASS as a whole;

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

12
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

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

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

20 50. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
21 Code § 17021.

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

26 Any person who engages, has engaged, or proposes to engage in unfair
27 competition may be enjoined in any court of competent jurisdiction. The court
28 may make such orders or judgments, including the appointment of a receiver,
as may be necessary to prevent the use or employment by any person of any
practice which constitutes unfair competition, as defined in this chapter, or as

1 may be necessary to restore to any person in interest any money or property,
2 real or personal, which may have been acquired by means of such unfair
competition.

3 Cal. Bus. & Prof. Code § 17203.

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

12 53. By the conduct alleged herein, DEFENDANT's practices were unlawful and
13 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
14 unscrupulous or substantially injurious to employees, and were without valid justification or
15 utility for which this Court should issue equitable and injunctive relief pursuant to Section
16 17203 of the California Business & Professions Code, including restitution of wages
17 wrongfully withheld.

18 54. By the conduct alleged herein, DEFENDANT's practices were deceptive and
19 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
20 meal and rest periods, the required amount of compensation for missed meal and rest
21 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
22 reimburse all necessary business expenses incurred, and failed to provide Fair Labor
23 Standards Act overtime wages due for overtime worked as a result of failing to include non-
24 discretionary incentive compensation into their regular rates of pay for purposes of
25 computing the proper overtime pay due to a business practice that cannot be justified,
26 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
27 in violation of Cal. Bus. Code §§ 17200, and for which this Court should issue injunctive
28

1 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
2 wages wrongfully withheld.

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

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

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

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

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

25 60. All the acts described herein as violations of, among other things, the
26 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
27 California Labor Code, were unlawful and in violation of public policy, were immoral,
28

1 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
2 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200.

3 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS are
4 entitled to, and do, seek such relief as may be necessary to restore to them the money and
5 property which DEFENDANT has acquired, or of which PLAINTIFFS and the other
6 members of the CALIFORNIA CLASS have been deprived, by means of the above
7 described unlawful and unfair business practices, including earned but unpaid wages for all
8 time worked.

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

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

20
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

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

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

1 65. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
2 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
3 California Labor Code and the Industrial Welfare Commission requirements for
4 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS
5 and CALIFORNIA CLASS Members.

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

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

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

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

22 70. In committing these violations of the California Labor Code, DEFENDANT
23 inaccurately calculated the correct time worked and consequently underpaid the actual time
24 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
25 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
26 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
27 requirements and other applicable laws and regulations.
28

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

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

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

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

24 75. In performing the acts and practices herein alleged in violation of California
25 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
26 CLASS for all time worked and provide them with the requisite compensation,
27 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
28 toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS

1 with a conscious and utter disregard for their legal rights, or the consequences to them, and
2 with the despicable intent of depriving them of their property and legal rights, and otherwise
3 causing them injury in order to increase company profits at the expense of these employees.

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

16 17 **THIRD CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

19 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

24 83. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
26 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
27 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
28 violation of the California Labor Code, the Industrial Welfare Commission requirements

1 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
2 wage practices as alleged herein, the PLAINTIFFS and the other members of the
3 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
4 worked.

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

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

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

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

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

7 89. 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 overtime worked and provide them with the requisite overtime 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 of and utter disregard for their legal rights, or the consequences to them,
13 and with the despicable intent of depriving them of their property and legal rights, and
14 otherwise causing them injury in order to increase company profits at the expense of these
15 employees.

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

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

26 93. DEFENDANT further violates California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
28 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with

1 the applicable Wage Order, one additional hour of compensation at each employee's regular
2 rate of pay for each workday that a meal period was not provided.

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

7
8 **FIFTH CAUSE OF ACTION**

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

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

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

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

16 96. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
17 from time to time required to work in excess of four (4) hours without being provided ten
18 (10) minute rest periods. Further, these employees from time to time were denied their first
19 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
20 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
21 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
22 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

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

27 97. DEFENDANT further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA

1 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
2 the applicable Wage Order, one additional hour of compensation at each employee's regular
3 rate of pay for each workday that rest period was not provided.

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

8 9 **SIXTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 226]**

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

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

17 100. Cal. Labor Code § 226 provides that an employer must furnish employees with
18 an "accurate itemized" statement in writing showing:

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

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

21 102. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
22 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct wages for all missed meal and rest breaks and the amount
25 of employment taxes which were not properly paid to state and federal tax authorities.
26 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
27 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
28 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred

1 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
2 226, in an amount according to proof at the time of trial (but in no event more than four
3 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
4 CALIFORNIA LABOR SUB-CLASS herein).

5
6 **SEVENTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

1 CLASS members for expenses resulting from using their personal cellular phones and home
2 offices for DEFENDANT within the course and scope of their employment for
3 DEFENDANT. These expenses were necessary to complete their principal job duties.
4 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS
6 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
7 and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
8 these expenses as an employer is required to do under the laws and regulations of California.

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

13 **EIGHTH CAUSE OF ACTION**

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

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

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

17 **and Against All Defendants)**

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

21 108. Cal. Lab. Code § 200 provides, in relevant part, that:

22 As used in this article:

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

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

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

4 110. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

17 112. Cal. Lab. Code § 203 provides, in relevant part, that:

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

24 113. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
25 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
26 owed as required by law. Additionally, at all times during the term of PLAINTIFFS’
27 employment with DEFENDANT, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
28 Members earned and accrued vested vacation and holiday time on the date of their
termination pursuant to DEFENDANT's uniform vacation policies and applicable California
law. The amount of vacation pay PLAINTIFFS and the other CALIFORNIA LABOR SUB-
CLASS Members earned and accumulated is evidenced by DEFENDANT’s business
records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay
such wages at the regular rate of pay and more specifically the final rate of pay that included
all non-discretionary incentive compensation. Rather than pay vacation wages at the regular

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

25 114. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
26 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
27 and who have not been fully paid their wages due to them, PLAINTIFFS demand thirty days
28 of pay as penalty for not paying all wages due at time of termination for all employees who

1 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
2 demands an accounting and payment of all wages due, plus interest and statutory costs as
3 allowed by law.

4
5 **NINTH CAUSE OF ACTION**

6 **For Failure to Pay Sick Pay Wages**

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

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

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

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

26 117. As a matter of policy and practice, DEFENDANT pays sick pay wages to
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the
28 incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-

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

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

24 119. As alleged herein and as a matter of policy and practice, DEFENDANT
25 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
26 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
27 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246,
28 among other Labor Code provisions. PLAINTIFFS are informed and believe that

1 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
2 mandates of the Labor Code as it relates to PLAINTIFFS' allegations, especially since the
3 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
4 include those benefits to which an employee is entitled as a part of his or her compensation,
5 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
6 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
7 willfully fails to timely pay PLAINTIFFS and the other members of the CALIFORNIA
8 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
9 penalties.

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

14
15 **TENTH CAUSE OF ACTION**

16 **For Violation of the Private Attorneys General Act**

17 **[Cal. Lab. Code §§ 2698]**

18 **(By Plaintiff Carr and Against All Defendants)**

19 121. Plaintiff Carr realleges and incorporates by this reference, as though fully set forth
20 herein, the prior paragraphs of this Complaint.

21 122. PAGA is a mechanism by which the State of California itself can enforce state labor
22 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
23 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
24 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
25 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
26 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
27 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
28

1 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
2 claims cannot be subject to arbitration.

3 123. Plaintiff Carr, and such persons that may be added from time to time who satisfy the
4 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
5 this Representative Action on behalf of the State of California with respect to himself and all
6 individuals who are or previously were employed by 2nd Street USA, Inc. and/or 2nd Street Retailers
7 in California, including any employees staffed with 2nd Street USA, Inc. and/or 2nd Street
8 Retailers by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
9 during the time period of February 13, 2023 until a date as determined by the Court (the "PAGA
10 PERIOD").

11 124. On February 13, 2024, Plaintiff Carr gave written notice by electronic mail to the Labor
12 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
13 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. *See*
14 **Exhibit #1**, attached hereto and incorporated by this reference herein (*PAGA Notice only without draft*
15 *complaint*). The statutory waiting period for Plaintiff Carr to add these allegations to the Complaint has
16 expired. As a result, pursuant to Section 2699.3, Plaintiff Carr may pursue a representative civil action
17 under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
18 AGGRIEVED EMPLOYEES as herein defined.

19 125. The policies, acts and practices heretofore described were and are an unlawful business
20 act or practice because DEFENDANT (a) failed to provide Plaintiff Carr and the AGGRIEVED
21 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
22 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
23 sick pay wages, (e) failed to reimburse employees for required expenses, (f) failed to provide wages
24 when due, and (g) failed to provide suitable seating, all in violation of the applicable Labor Code
25 sections listed in Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512,
26 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
27 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide
28 Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such

1 conduct.¹ Plaintiff Carr hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
2 Attorney General Act of 2004 as the representative of the State of California for the illegal conduct
3 perpetrated on Plaintiff Carr and the AGGRIEVED EMPLOYEES.

4 126. All of the conduct and violations alleged herein occurred during the PAGA
5 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
6 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
7 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
8 AJDAR 12157 (Certified for Publication 12/19/18).

9
10 **ELEVENTH CAUSE OF ACTION**

11 **Wrongful Termination In Violation of Public Policy**

12 **(By Plaintiff Carr Against All Defendants)**

13 127. Plaintiff Carr realleges and incorporates by reference, as though fully set forth
14 herein, the prior paragraphs of this Complaint.

15 128. Subsequent to Plaintiff Carr's participation in protective activity by reporting
16 retaliation and discrimination based on race and his sexual orientation, DEFENDANT
17 subjected Plaintiff Carr to adverse employment actions by retaliating against Plaintiff Carr.
18 Starting in August of 2023 and continuing throughout the rest of Plaintiff Carr's
19 employment, Plaintiff Carr reported workplace discrimination he was experiencing from his
20 Store Manager, Rudolfo Martinez, based on his race as an African American and his sexual
21 orientation as a homosexual male. In or around September of 2023, Plaintiff Carr was
22 denied a promotion. Throughout the rest of Plaintiff Carr's employment, Plaintiff Carr
23 continued to voice concerns about the harassing treatment in Plaintiff Carr's store and
24 voiced concerns it was retaliation stemming from Plaintiff Carr's reporting of the workplace
25 discrimination and harassment. Shortly thereafter, on October 24, 2023, DEFENDANT
26 informed Plaintiff Carr that he was being terminated. Because of Plaintiff Carr's

27
28 ¹As to the First Cause of Action alleging violations of the PAGA, Plaintiff specifically excludes
and/or does not allege any claims under California Labor Code §558(a)(3).

1 engagement in the protected activity of reporting harassment and discrimination based on
2 his association in a protected class, DEFENDANT terminated Plaintiff Carr's employment.
3 As a result, there is a causal link between the protected activity and DEFENDANT's
4 decision to terminate Plaintiff Carr's employment, which is against public policy.

5 129. Plaintiff Carr raised complaints of illegality while Plaintiff Carr worked for
6 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
7 retaliated against Plaintiff Carr by taking adverse employment actions, including
8 employment termination, against Plaintiff Carr.

9 130. As a proximate result of DEFENDANT's willful, knowing, and intentional
10 misconduct, Plaintiff Carr has suffered and continues to suffer humiliation, emotional
11 distress, and mental and physical pain and anguish, all to Plaintiff Carr's damage in a sum
12 according to proof.

13 131. As a result of DEFENDANT's adverse employment actions against Plaintiff
14 Carr, Plaintiff Carr has suffered general and special damages in sums according to proof.

15 132. DEFENDANT's misconduct was committed intentionally, in a malicious,
16 oppressive manner, and fraudulent manner entitling Plaintiff Carr to punitive damages
17 against DEFENDANT.

18 19 **TWELFTH CAUSE OF ACTION**

20 **Retaliation**

21 **[Violation of Cal. Lab. Code § 1102.5, *et seq.*]**

22 **(By Plaintiff Carr Against All Defendants)**

23 133. Plaintiff Carr realleges and incorporates by reference, as though fully set forth
24 herein, the prior paragraphs of this Complaint.

25 134. At all relevant times, Labor Code section 1102.5 was in effect and was
26 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
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1 employee, including Plaintiff Carr, for raising complaints of illegality and/or belief that the
2 employee may disclose illegality.

3 135. Subsequent to Plaintiff Carr's participation in protective activity by reporting
4 retaliation and discrimination based on race and his sexual orientation, DEFENDANT
5 subjected Plaintiff Carr to adverse employment actions by retaliating against Plaintiff Carr.
6 Starting in August of 2023 and continuing throughout the rest of Plaintiff Carr's
7 employment, Plaintiff Carr reported workplace discrimination he was experiencing from his
8 Store Manager, Rudolfo Martinez, based on his race as an African American and his sexual
9 orientation as a homosexual male. In or around September of 2023, Plaintiff Carr was
10 denied a promotion. Throughout the rest of Plaintiff Carr's employment, Plaintiff Carr
11 continued to voice concerns about the harassing treatment in Plaintiff Carr's store and
12 voiced concerns it was retaliation stemming from Plaintiff Carr's reporting of the workplace
13 discrimination and harassment. Shortly thereafter, on October 24, 2023, DEFENDANT
14 informed Plaintiff Carr that he was being terminated. Because of Plaintiff Carr's
15 engagement in the protected activity of reporting harassment and discrimination based on
16 his association in a protected class, DEFENDANT terminated Plaintiff Carr's employment.
17 As a result, there is a causal link between the protected activity and DEFENDANT's
18 decision to terminate Plaintiff Carr's employment, which is against public policy.

19 136. As a proximate result of DEFENDANT's willful, knowing, and intentional
20 violation(s) of Labor Code section 1102.5, Plaintiff Carr has suffered and continues to suffer
21 humiliation, emotional distress, and mental and physical pain and anguish, all to Plaintiff
22 Carr's damage in a sum according to proof.

23 137. As a result of DEFENDANT's adverse employment actions against Plaintiff
24 Carr, Plaintiff Carr has suffered general and special damages in sums according to proof.

25 138. DEFENDANT's misconduct was committed intentionally, in a malicious,
26 oppressive manner, and fraudulent manner entitling Plaintiff Carr to punitive damages
27 against defendants.
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1 **THIRTEENTH CAUSE OF ACTION**

2 **[Discrimination and Retaliation For the Exercise of Rights Guaranteed Under the**
3 **FEHA, Participating in Protected Activities, and/or Opposing DEFENDANT's Failure**
4 **to Provide Such Rights]**

5 **Violation of FEHA Government Section 12900, *et. seq.***

6 **(By Plaintiff Carr Against All Defendants)**

7 139. Plaintiff Carr realleges and incorporates by reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint. Prior to filing this action Plaintiff Carr
9 exhausted his administrative remedies by filing a timely administrative complaint with the
10 Department of Fair Employment and Housing ("DFEH") and received a DFEH Right to Sue
11 letter on February 16, 2024.

12 140. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
13 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
14 including the following bases for liability:

15 a. Taking adverse employment actions against Plaintiff Carr, including
16 paying termination of employment, lower wages, discharging, barring, refusing to transfer,
17 retain, hire, select, and/or employ, and/or otherwise discriminating against Plaintiff Carr, in
18 whole or in part on the basis of Plaintiff Carr's race and/or sexual orientation in violation of
19 Government Code Section 12940(a);

20 b. Harassing Plaintiff Carr and/or creating a hostile work environment, in
21 whole or in part on the basis of Plaintiff Carr's race and/or sexual orientation;

22 c. Failing to take all reasonable steps to prevent discrimination and
23 harassment based on race and/or sexual orientation in violation of Government Code section
24 12940(k);

25 d. Retaliating against Plaintiff Carr for seeking to exercise rights
26 guaranteed under FEHA, participating in protected activities, and/or opposing
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1 DEFENDANT's failure to provide such rights, in violation of Government Code Section
2 12940(h).

3 141. Subsequent to Plaintiff Carr's participation in protective activity by reporting
4 retaliation and discrimination based on race and his sexual orientation, DEFENDANT
5 subjected Plaintiff Carr to adverse employment actions by retaliating against Plaintiff Carr.
6 Starting in August of 2023 and continuing throughout the rest of Plaintiff Carr's
7 employment, Plaintiff Carr reported workplace discrimination he was experiencing from his
8 Store Manager, Rudolfo Martinez, based on his race as an African American and his sexual
9 orientation as a homosexual male. In or around September of 2023, Plaintiff Carr was
10 denied a promotion. Throughout the rest of Plaintiff Carr's employment, Plaintiff Carr
11 continued to voice concerns about the harassing treatment in Plaintiff Carr's store and
12 voiced concerns it was retaliation stemming from Plaintiff Carr's reporting of the workplace
13 discrimination and harassment. Shortly thereafter, on October 24, 2023, DEFENDANT
14 informed Plaintiff Carr that he was being terminated. Because of Plaintiff Carr's
15 engagement in the protected activity of reporting harassment and discrimination based on
16 his association in a protected class, DEFENDANT terminated Plaintiff Carr's employment.
17 As a result, there is a causal link between the protected activity and DEFENDANT's
18 decision to terminate Plaintiff Carr's employment, which is against public policy.

19 142. As a result of the good faith complaints Plaintiff Carr made to DEFENDANT
20 regarding the discriminatory practices stated above and also as a result of Plaintiff Carr's
21 race and/or sexual orientation, DEFENDANT in direct retaliation for those complaints,
22 denied Plaintiff Carr employment benefits, and ultimately terminated Plaintiff Carr's
23 employment with DEFENDANT.

24 143. As a proximate result of DEFENDANT's willful, knowing, and intentional
25 discrimination against Plaintiff Carr, Plaintiff Carr has sustained and continues to sustain
26 substantial losses of earnings and other employment benefits.
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144. As a proximate result of DEFENDANT's willful, knowing, and intentional discrimination against Plaintiff Carr, Plaintiff Carr has suffered and continues to suffer humiliation, emotional distress, and physical and mental pain and anguish, all to Plaintiff Carr's damage in a sum according to proof.

145. Plaintiff Carr has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to Government Code Section 12965(b), Plaintiff Carr is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

146. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling Plaintiff Carr to punitive damages against DEFENDANT.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

- 1 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 2 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
- 3 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
- 4 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 5 B) Compensatory damages, according to proof at trial, including compensatory
- 6 damages for minimum and overtime compensation due PLAINTIFFS and the
- 7 other members of the CALIFORNIA LABOR SUB-CLASS, during the
- 8 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
- 9 at the statutory rate;
- 10 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 11 in which a violation occurs and one hundred dollars (\$100) per each member of
- 12 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 13 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 14 an award of costs for violation of Cal. Lab. Code § 226;
- 15 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 16 the applicable IWC Wage Order;
- 17 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 18 1197;
- 19 F) The amount of the expenses PLAINTIFFS and each member of the
- 20 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
- 21 plus interest, and costs of suit; and
- 22 G) The wages of all terminated employees in the CALIFORNIA LABOR
- 23 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
- 24 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 25
- 26 3. On behalf of the State of California and with respect to all AGGRIEVED
- 27 EMPLOYEES:
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DEMAND FOR A JURY TRIAL

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

Dated: June 4, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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