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February 20, 2024
CA3147

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Sedgwick Claims Management Services, Inc.
Certified Mail #9589071052701316528865
Becky Degeorge
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Sedgwick Claims Management Services, Inc. in California in the positions of Field Nurse Case Manager and/or Telephonic Nurse Case Manager, and/or Medical Case Manager, and/or Utilization Case Manager during the time period of February 20, 2023 until a date as determined by the Court. Our offices represent Plaintiff Sherry Rumph (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Sedgwick Claims Management Services, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a Field Nurse Case Manager from October of 2022 to June 30, 2023 as a salaried employee exempt from overtime wages. However, the job duties of Plaintiff and other Aggrieved Employees did not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As a result, Plaintiff and other Aggrieved Employees worked time for which they were unlawfully not paid the correct compensation. Further, Defendant unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide

Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 was paid online to the LWDA. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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

9 **IN AND FOR THE COUNTY OF RIVERSIDE**

10
11 SHERRY RUMPH, an individual, on
behalf of herself and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 vs.

15 SEDGWICK CLAIMS
MANAGEMENT SERVICES, INC., a
16 Corporation; and DOES 1 through 50,
17 inclusive,

18 Defendants.
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Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203

DEMAND FOR A JURY TRIAL

1 Sherry Rumph ("PLAINTIFF"), an individual, on behalf of herself and all other similarly
2 situated current and former employees, alleges on information and belief, except her own acts
3 and knowledge, the following:

4
5 **THE PARTIES**

6 1. Sedgwick Claims Management Services, Inc. ("DEFENDANT") is a corporation
7 that conducts regular and substantial business in the State of California. DEFENDANT
8 provides case management services. The Company offers medical and vocational case
9 management, consultancy, and other services.

10 2. To successfully compete against the other comprehensive medical management
11 service providers, DEFENDANT substantially reduced its labor costs by placing the labor
12 burden on a smaller number of employees that DEFENDANT classified as exempt from
13 overtime wages. The goal of overtime laws includes expanding employment throughout the
14 workforce by putting financial pressure on the employer and nurturing a stout job market, as
15 well as the important public policy goal of protecting employees in a relatively weak bargaining
16 position against the unfair scheme of uncompensated overtime work. An employer's obligation
17 to pay its employees wages is more than a matter of private concern between the parties. That
18 obligation is founded on a compelling public policy judgment that employees are entitled to
19 work a livable number of hours at a livable wage. In addition, statutes and regulations that
20 compel employers to pay overtime relate to fundamental issues of social welfare worthy of
21 protection. The requirement to pay overtime wages extends beyond the benefits individual
22 workers receive because overtime wages discourage employers from concentrating work in a
23 few overburdened hands and encourage employers to instead hire additional employees.
24 Especially in today's economic climate, the importance of spreading available work to reduce
25 unemployment cannot be overestimated.

26 3. As part of their business, DEFENDANT employs a fleet of Case Managers. The
27 employees employed in positions at DEFENDANT with the titles of "Field Nurse Case
28 Manager," "Telephonic Nurse Case Manager," "Medical Case Manager," and "Utilization Case

1 Manager” all perform the same primary job duty which is to perform day-to-day routine clerical
2 work in the management of medical conditions of injured workers and/or chronically ill patients
3 and are collectively referred to herein as the "Case Managers” or “CM.”

4 4. PLAINTIFF was employed by DEFENDANT in California as a Case Manager
5 from October of 2022 to June 30, 2023 and was classified as a salaried employee exempt from
6 overtime pay and the legally required meal and rest breaks.

7 5. As part of their business, DEFENDANT employs a fleet of “Case Managers.”
8 PLAINTIFF, as a CM, was engaged in the core, day-to-day business activities of
9 DEFENDANT. The CMs engaged in the finite set of non-exempt clerical tasks of reviewing
10 client’s pre-injury and/or pre-illness position, making appointments with client’s physician or
11 therapist, listening to and reviewing the physician’s or therapist’s diagnosis, obtaining
12 prescriptions, communicating both in-person and by telephone with employers, medical
13 providers, attorneys, insurance carriers and claims adjusters, applying all special instructions
14 required by individual insurance carriers and referral sources, following all pre-established and
15 required case management plans, preparing reports and other required paperwork to document
16 all casework activities, meeting weekly billing requirements, operating office machines,
17 accessing filing cabinets, and attending staff meetings, workshops and/or training programs all
18 in strict compliance with established specific procedures and protocols which governed and
19 controlled every aspect of the work performed by PLAINTIFF and other Case Managers. These
20 standardized procedures mirror the realities of the workplace evidencing a uniformity of the
21 highly skilled clerical work performed by PLAINTIFF and other Case Managers and negate any
22 exercise of independent judgment and discretion as to any matter of significance and negate any
23 role in the participation of formulating DEFENDANT’s business policies.

24 6. PLAINTIFF and other Case Managers job duties included monitoring a recovery
25 plan controlled by a physician and a claims adjuster and did not have the power to alter that
26 course of treatment. Any advice PLAINTIFF and other Case Managers provided was on an
27 individual level, far from questions affecting management or general operations of the business.
28 Rather, PLAINTIFF and other Case Managers used their RN training to coordinate care, act as

1 intermediary between patients, adjustors, and doctors and operated in a framework in which
2 these employees do not exercise ultimate decision-making power.

3 7. To perform their finite set of tasks, the CMs did not engage in a supervisory role
4 given the constraints placed upon them by company policy. CMs did not determine what work
5 was to be done by other employees or in what time frame. Furthermore, the CMs also did not
6 have a distinct role in training other employees or determining what training they were to
7 receive. Lastly, PLAINTIFF and other CMs did not have the authority to hire, fire, or promote
8 employees, determine their pay rates or benefits, or give raises as they are unable to make
9 employment-related, personnel decisions. Consequently, PLAINTIFF and the other CMs did
10 not have the authority to decide whether or not an employee should be disciplined for an
11 infraction. Disciplinary decisions were made by the human resources department or dictated
12 by company policies. Overall, PLAINTIFF's and other CMs recommendations were given
13 little, if any, weight on all the above issues. As a result, PLAINTIFF and the other CMs were
14 engaged in a type of work that requires no exercise of independent judgment or discretion as
15 to any matter of significance.

16 8. PLAINTIFF brings this Class Action on behalf of herself and a California class,
17 defined as all persons who are or previously were employed by DEFENDANT in California as
18 Case Managers and were classified as exempt from overtime wages (the "CALIFORNIA
19 CLASS") at any time during the period beginning on the date of four (4) years prior to the filing
20 of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA
21 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
22 CLASS Members is under five million dollars (\$5,000,000.00).

23 9. The work schedule for PLAINTIFF and other CALIFORNIA CLASS Members
24 was set by DEFENDANT. PLAINTIFF and other CALIFORNIA CLASS Members worked
25 from time to time in excess of eight (8) hours in a workday and/or more than forty (40) hours
26 in any given workweek.

27 10. PLAINTIFF and the other CALIFORNIA CLASS Members were not provided
28 with overtime compensation and other benefits required by law as a result of being classified

1 as "exempt" by DEFENDANT.

2 11. As a matter of company policy, practice, and procedure, DEFENDANT has
3 unlawfully, unfairly and/or deceptively classified every CM as exempt from overtime pay and
4 other related benefits, fails to pay the required overtime compensation and otherwise failed to
5 comply with all applicable labor laws with respect to these CMs.

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

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

23 24 THE CONDUCT

25 14. The finite set of tasks required of the CMs as defined by DEFENDANT were
26 executed by the CMs through the performance of non-exempt labor within a defined manual
27 skill set.

28 15. Although PLAINTIFF and the other CMs spent the vast majority of their time

1 performing these non-exempt tasks, DEFENDANT instituted a blanket classification policy,
2 practice and procedure by which all of these CMs were classified as exempt from overtime
3 compensation. By reason of this exemption practice, policy and procedure applicable to
4 PLAINTIFF and the other CMs who performed these non-exempt tasks, DEFENDANT
5 committed acts of unfair competition in violation of the California Unfair Competition law, Cal.
6 Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a uniform company-wide
7 policy, practice and procedure which fails to properly classify PLAINTIFF and the other CMs
8 and thereby fails to pay them overtime wages for documented overtime worked. The proper
9 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's
10 intentional disregard of the obligation to meet this burden, DEFENDANT failed to pay all
11 required overtime compensation for work performed by the members of the CALIFORNIA
12 CLASS and violated the California Labor Code and regulations promulgated thereunder as
13 herein alleged. Further, DEFENDANT underpaid sick pay wages to PLAINTIFF and other
14 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of
15 pay. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members regularly earn non-
16 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
17 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay
18 to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay. In
19 addition, DEFENDANT failed to provide the legally required off-duty meal and rest breaks to
20 PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage
21 Order and Labor Code. DEFENDANT does not have a policy or practice which provides meal
22 and rest breaks to PLAINTIFF and the other CALIFORNIA CLASS Members. As a result,
23 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
24 legally required meal and rest breaks is evidenced by DEFENDANT's business records which
25 contains no record of these breaks.

26 16. DEFENDANT, as a matter of law, has the burden of proving that (a) employees
27 are properly classified as exempt and that (b) DEFENDANT otherwise complies with applicable
28 laws.

1 17. During their employment with DEFENDANT, PLAINTIFF and the other
2 CALIFORNIA CLASS Members, performed non-managerial, non-exempt tasks, but were
3 nevertheless classified by DEFENDANT as exempt from overtime pay and worked more than
4 eight (8) hours in a workday and/or more than forty (40) hours in a workweek.

5 18. A crucial requirement to be properly classified as exempt under both the
6 California Professional and Administrative exemptions is the ability to exercise independent
7 discretion and judgment as to matters of significance. PLAINTIFF and the other Case
8 Managers were assigned cases involving injured workers and chronically ill patients and were
9 micro-managed in every aspect of managing their assigned cases. These employees did not
10 exercise discretion in the sense of making important decisions of significance to the employer's
11 business even though they exercised some measure of discretion and judgment as to the manner
12 in which they performed their tasks. PLAINTIFF and other Case Managers performed routine
13 clerical tasks and followed set guidelines that were mandated and authorized by DEFENDANT.

14 19. Given the circumstances of the job functions performed by PLAINTIFF and the
15 others similarly situated, PLAINTIFF and the others similarly situated were hired as registered
16 nurses for Case Manager positions since their nursing experience is useful for reviewing
17 medical data, but they did not provide "traditional" direct medical services to injured workers
18 or chronically ill patients, render an opinion or make any medical diagnosis (which is prohibited
19 by state law). PLAINTIFF and others similarly situated did not primarily perform office or
20 non-manual staff functions directly related to policymaking and/or the general operation of the
21 DEFENDANT. The work of PLAINTIFF and the others similarly situated did not require the
22 use of "traditional" nursing skills, training, experience and/or knowledge. Instead, PLAINTIFF
23 and the others similarly situated all served as Case Managers whose primary job duty was and
24 is to perform day-to-day routine clerical work in the management of medical conditions of
25 injured workers and/or chronically ill patients. Courts and State Labor Boards have held that
26 registered nurses, like PLAINTIFF and the others similarly situated, who were not expected to
27 utilize "traditional" nursing skills and instead rely on company manuals to perform
28 administrative services, or who do not need a nursing degree or license to qualify for

1 employment, do not exercise discretion and independent judgment as to matters of significance,
2 and therefore, are non-exempt employees entitled to overtime compensation.

3 20. PLAINTIFF and the other Case Managers employed by DEFENDANT were also
4 not engaged in work of a type that was or now is performed at the level of the policy or
5 management of the DEFENDANT. PLAINTIFF and the other Case Managers employed by
6 DEFENDANT were also not engaged in work requiring knowledge of an advanced type in a
7 field or science or learning customarily acquired by a prolonged course of specialized
8 intellectual instruction and study, but rather their work involved the performance of routine
9 mental, clerical, and/or technical processes. California law provides two alternative avenues
10 to Professional exempt status that PLAINTIFF and other Case Managers fail to meet. To be
11 exempt from overtime pay and minimum wage requirements under the California exemption
12 for “professional” employees, the employees must either be licensed by the State of California
13 and “primarily engaged” in an enumerated profession, or “primarily engaged in an occupation
14 commonly recognized as a learned or artistic profession.” 8 California Code of Regulations §
15 11010 *et seq.* PLAINTIFF and other Case Managers were not required to be certified by the
16 State of California to perform the finite set of tasks engaged in by Case Managers and/or did
17 not primarily engage in the recognized profession of law, medicine, dentistry, optometry,
18 architecture, engineering, teaching, or accounting. The federal regulations after which the
19 California learned professional exemption was explicitly patterned condition the learned
20 professions exemption upon completion of an advanced course of education. Case Managers
21 do not qualify as exempt learned professionals because an “advanced specialized academic
22 degree” is not a standard prerequisite for entry into the field. To perform the finite set of tasks
23 required of a Case Manager, PLAINTIFF and other CALIFORNIA CLASS Members were not
24 required to hold an advanced degree customarily acquired by a prolonged course of specialized
25 intellectual instruction and study, as distinguished from a general four-year baccalaureate
26 degree. Moreover, it is not sufficient that an employee have an advanced degree, but rather the
27 position the employee occupies and the work performed must actually require such a degree.
28 California Industrial Wage Order 4-2001(1)(A)(3)(b)(1). The position of a Case Manager does

1 not actually require an advanced degree. PLAINTIFF and the other Case Managers employed
2 by DEFENDANT were also not engaged in work that is intellectual and varied in character, but
3 rather is routine mental and clerical work that is of such character that the output produced or
4 the result accomplished can be standardized in relation to a given period of time. The work of
5 a Case Manager of DEFENDANT is work wherein PLAINTIFF and the members of the
6 CALIFORNIA CLASS are engaged in the day-to-day business of DEFENDANT.

7 21. CMs were classified as exempt from California overtime and related laws by
8 DEFENDANT, however, these employees did not have managerial duties or authority. CMs
9 in performing these ongoing day-to-day, non-exempt and non-managerial tasks had no role in
10 supervising employees and had no authority to make employment-related decisions relating to
11 DEFENDANT's employees. Furthermore, the CMs were tightly controlled by company policy
12 and by their supervisors, did not exercise discretion or independent judgment as to matters of
13 significance, and their tasks were not directly related to DEFENDANT's management policies
14 or general business operations.

15 22. PLAINTIFF and all members of the CALIFORNIA CLASS were uniformly
16 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
17 DEFENDANT failed to take the proper steps to determine whether PLAINTIFF, and the
18 members of the CALIFORNIA CLASS, were properly classified under the applicable Industrial
19 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as
20 exempt from applicable California labor laws. Since DEFENDANT affirmatively and willfully
21 misclassified PLAINTIFF and the members of the CALIFORNIA CLASS in compliance with
22 California labor laws, DEFENDANT's practices violated and continue to violate California law.
23 In addition, DEFENDANT acted deceptively by falsely and fraudulently telling PLAINTIFF
24 and each member of the CALIFORNIA CLASS that they are exempt from overtime pay when
25 DEFENDANT knew or should have known that this statement is false and not based on known
26 facts. DEFENDANT also acted unfairly by violating the California labor laws, and as a result
27 of this policy and practice, DEFENDANT also violated the UCL. In doing so, DEFENDANT
28 cheated the competition by paying the CALIFORNIA CLASS less than the amount competitors

1 paid who complied with the law and cheated the CALIFORNIA CLASS by not paying them in
2 accordance with California law.

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

14 24. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
15 Members as business expenses, were required by DEFENDANT to use their own personal
16 homes offices to work remotely for DEFENDANT as a result of and in furtherance of their job
17 duties as employees for DEFENDANT but were not reimbursed or indemnified by
18 DEFENDANT for the cost associated with the use of their personal home offices for
19 DEFENDANT's benefit. As a result, in the course of their employment with DEFENDANT,
20 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
21 expenses.

22 25. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime,
23 DEFENDANT also failed to provide PLAINTIFF and the other CALIFORNIA CLASS
24 Members with a wage statement in writing that accurately sets forth gross wages earned, all
25 applicable hourly rates in effect during the pay period and the corresponding amount of time
26 worked at each hourly rate by the PLAINTIFF and the other CALIFORNIA CLASS Members.
27 This conduct violated California Labor Code § 226. The pay stub also did not accurately
28 display anywhere PLAINTIFF's and the other CALIFORNIA CLASS Members' overtime work

1 and applicable rates of overtime pay for the pay period.

2 26. By reason of this uniform conduct applicable to PLAINTIFF and all the
3 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
4 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
5 (the "UCL"), by engaging in a company-wide policy and procedure which fails to correctly
6 classify PLAINTIFF and the CALIFORNIA CLASS of CMs as non-exempt. The proper
7 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's
8 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly
9 calculate and/or pay all required overtime compensation for work performed by the members
10 of the CALIFORNIA CLASS and violated the applicable Wage Order, the California Labor
11 Code and the regulations promulgated thereunder as herein alleged.

12 27. Specifically as to PLAINTIFF, she performed the finite set of tasks of reviewing
13 client's pre-injury and/or pre-illness position, making appointments with client's physician or
14 therapist, listening to and reviewing the physician's or therapist's diagnosis, obtaining
15 prescriptions, communicating both in-person and by telephone with employers, medical
16 providers, attorneys, insurance carriers and claims adjusters, applying all special instructions
17 required by individual insurance carriers and referral sources, following all pre-established and
18 required case management plans, preparing reports and other required paperwork to document
19 all casework activities, meeting weekly billing requirements, operating office machines,
20 accessing filing cabinets, and attending staff meetings, workshops and/or training programs.
21 All of these tasks were performed in strict compliance with established specific procedures and
22 protocols which governs and controls every aspect of the work performed by PLAINTIFF.
23 PLAINTIFF uses the skill, training, and expertise acquired on the job to perform her job tasks,
24 and performed these job tasks in compliance with the directives given to her by other employees
25 of DEFENDANT. During the CALIFORNIA CLASS PERIOD, PLAINTIFF as a Case
26 Manager, was classified by DEFENDANT as exempt from overtime pay and worked from time
27 to time in excess of eight (8) hours in a workday and/or more than forty (40) hours in a
28 workweek, but as a result of DEFENDANT's misclassification of PLAINTIFF as exempt from

1 the applicable California Labor Code provisions, PLAINTIFF wa not compensated by
2 DEFENDANT for her overtime hours worked at the applicable overtime rate. DEFENDANT
3 did not have a policy or practice which provided meal and rest breaks to PLAINTIFF and also
4 failed to compensate PLAINTIFF for her missed meal and rest breaks. As a consequence of the
5 foregoing, PLAINTIFF was not provided with accurate and itemized wage statements showing
6 the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay
7 period, including overtime hourly rates, and the corresponding number of hours worked at each
8 hourly rate, by DEFENDANT during the CALIFORNIA CLASS PERIOD in violation of Cal.
9 Lab. Code § 226(a). The amount in controversy for PLAINTIFF individually does not exceed
10 the sum or value of \$75,000.

11 **THE CALIFORNIA CLASS**

12 28. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
13 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
14 Action, pursuant to California Code of Civil Procedure Section 382, on behalf of a California
15 Class, defined as all persons who are or previously were employed by DEFENDANT in
16 California as Case Managers and were classified as exempt from overtime wages (the
17 "CALIFORNIA CLASS") at any time during the period beginning on the date of four (4) years
18 prior to the filing of this Complaint and ending on the date as determined by the Court (the
19 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
20 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

24 30. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 wilfully, engages in a practice whereby DEFENDANT unfairly, unlawfully, and deceptively
28

1 instituted a practice to ensure that the employees employed in a CM position are not properly
2 classified as non-exempt from the requirements of California Labor Code §§ 510, *et seq.*

3 31. DEFENDANT has the burden of proof to make sure that each and every employee
4 is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*
5 DEFENDANT, however, as a matter of policy and procedure had in place during the
6 CALIFORNIA CLASS PERIOD and still has in place a policy and practice that misclassifies
7 the CALIFORNIA CLASS Members as exempt. DEFENDANT's uniform policy and practice
8 in place at all times during the CALIFORNIA CLASS PERIOD and currently in place is to
9 classify each and every CALIFORNIA CLASS Member as exempt from the requirements of
10 the California Labor Code §§ 510, *et seq.* This common business practice applicable to each
11 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
12 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
13 (the "UCL") as causation, damages, and reliance are not elements of this claim.

14 32. At no time during PLAINTIFF's employment with DEFENDANT has any Case
15 Manager been reclassified as non-exempt from the applicable requirements of California Labor
16 Code §§ 510, *et seq.* after each CALIFORNIA CLASS Member was initially, uniformly, and
17 systematically classified as exempt upon being hired.

18 33. Any individual declarations of any employees offered at this time purporting to
19 indicate that one or more Case Managers may have been properly classified is of no force or
20 affect absent contemporaneous evidence that DEFENDANT's uniform system did not
21 misclassify PLAINTIFF and the other CALIFORNIA CLASS Members as exempt pursuant to
22 Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,
23 DEFENDANT's business practice is unlawful, unfair and/or deceptive under the UCL and may
24 be so adjudicated on a class-wide basis. As a result of the UCL violations, PLAINTIFF and the
25 CALIFORNIA CLASS Members are entitled to compel DEFENDANT to provide restitutionary
26 disgorgement of their ill-gotten gains into a fluid fund in order to restitute these funds to
27 PLAINTIFF and the CALIFORNIA CLASS Members according to proof.

28 34. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA

1 CLASS Members is impracticable.

2 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
3 law by:

- 4 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
5 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
6 having in place company policies, practices and procedures that uniformly
7 misclassified PLAINTIFF and the members of the CALIFORNIA CLASS
8 as exempt;
- 9 (b) Committing an act of unfair competition in violation of the UCL, by
10 unlawfully, unfairly, and/or deceptively failing to have in place a company
11 policy, practice and procedure that accurately determines the amount of
12 working time spent by PLAINTIFF and the members of the
13 CALIFORNIA CLASS performing non-exempt labor;
- 14 (c) Committing an act of unfair competition in violation of the UCL, by
15 having in place a company policy, practice and procedure that fails to
16 reclassify as non-exempt those members of the CALIFORNIA CLASS
17 whose actual tasks were comprised of non-exempt job functions;
- 18 (d) Committing an act of unfair competition in violation of the UCL, by
19 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct
20 overtime pay to PLAINTIFF and the members of the CALIFORNIA
21 CLASS who are improperly classified as exempt, and retaining the unpaid
22 overtime to the benefit of DEFENDANT;
- 23 (e) Committing an act of unfair competition in violation of the UCL, by
24 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
25 the CALIFORNIA CLASS members; and,
- 26 (f) Committing an act of unfair competition in violation of the California
27 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
28 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and

1 the CALIFORNIA CLASS members with necessary expenses incurred in
2 the discharge of their job duties.

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

- 5 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
6 that the joinder of all such persons is impracticable and the disposition of
7 their claims as a class will benefit the parties and the Court;
- 8 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
9 raised in this Complaint are common to the CALIFORNIA CLASS will
10 apply uniformly to every member of the CALIFORNIA CLASS;
- 11 (c) The claims of the representative PLAINTIFF are typical of the claims of
12 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
13 other members of the CALIFORNIA CLASS, was initially classified as
14 exempt upon hiring based on the defined corporate policies and practices
15 and labored under DEFENDANT's procedure that fails to properly
16 classify as non-exempt PLAINTIFF and the members of the
17 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
18 result of DEFENDANT's employment practices. PLAINTIFF and the
19 members of the CALIFORNIA CLASS were and are similarly or
20 identically harmed by the same unlawful, deceptive, unfair and pervasive
21 pattern of misconduct engaged in by DEFENDANT by deceptively
22 advising all Case Managers that they were exempt from overtime wages
23 based on the defined corporate policies and practices, and unfairly failing
24 to pay overtime to these employees who were improperly classified as
25 exempt; and,
- 26 (d) The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA CLASS, and has retained counsel
28 who are competent and experienced in Class Action litigation. There are

1 no material conflicts between the claims of the representative PLAINTIFF
2 and the members of the CALIFORNIA CLASS that would make class
3 certification inappropriate. Counsel for the CALIFORNIA CLASS will
4 vigorously assert the claims of all employees in the CALIFORNIA
5 CLASS.

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

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

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

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

21 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
22 act on grounds generally applicable to the CALIFORNIA CLASS, making
23 appropriate class-wide relief with respect to the CALIFORNIA CLASS
24 as a whole in that DEFENDANT uniformly classified and treated the Case
25 Managers as exempt and, thereafter, uniformly failed to take proper steps
26 to determine whether the Case Managers were properly classified as
27 exempt, and thereby denied these employees overtime wages as required
28 by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices constitute unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA 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 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 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 CLASS, which would establish incompatible standards of conduct for DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be

dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

(c) The members of the CALIFORNIA CLASS are so numerous that it is

1 impractical to bring all members of the CALIFORNIA CLASS before the
2 Court;

3 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
4 able to obtain effective and economic legal redress unless the action is
5 maintained as a Class Action;

6 (e) There is a community of interest in obtaining appropriate legal and
7 equitable relief for the acts of unfair competition, statutory violations and
8 other improprieties, and in obtaining adequate compensation for the
9 injuries which DEFENDANT's actions have inflicted upon the
10 CALIFORNIA CLASS;

11 (f) There is a community of interest in ensuring that the combined assets of
12 DEFENDANT are sufficient to adequately compensate the members of the
13 CALIFORNIA CLASS for the injuries sustained;

14 (g) DEFENDANT has acted or refused to act on grounds generally applicable
15 to the CALIFORNIA CLASS, thereby making final class-wide relief
16 appropriate with respect to the CALIFORNIA CLASS as a whole;

17 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
18 the business records of DEFENDANT. The CALIFORNIA CLASS
19 consists of all DEFENDANT's Case Managers who were classified as
20 exempt and who were employed in California during the CALIFORNIA
21 CLASS PERIOD; and,

22 (i) Class treatment provides manageable judicial treatment calculated to bring
23 an efficient and rapid conclusion to all litigation of all wage and hour
24 related claims arising out of the conduct of DEFENDANT as to the
25 members of the CALIFORNIA CLASS.

26 39. DEFENDANT maintains records from which the Court can ascertain and identify
27 by name and job title, each of DEFENDANT's employees who have been intentionally
28 subjected to DEFENDANT's corporate policies, practices and procedures as herein alleged.

1 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
2 similarly situated employees when they have been identified.

3
4 **THE CALIFORNIA LABOR SUB-CLASS**

5 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth and Sixth Causes of
6 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
7 CLASS who were employed by DEFENDANT in California (the "CALIFORNIA LABOR
8 SUB-CLASS") at any time during the period beginning on the date of four (4) years prior to the
9 filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA
10 LABOR SUB-CLASS PERIOD") pursuant to California Code of Civil Procedure § 382. The
11 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
12 Members is under five million dollars (\$5,000,000.00).

13 41. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
14 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare
15 Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully, and
16 systematically misclassified the PLAINTIFF and the other members of the CALIFORNIA
17 CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime wages and
18 other labor laws based on DEFENDANT's comprehensive policies and procedures in order to
19 avoid the payment of overtime wages by misclassifying their positions as exempt from overtime
20 wages and other labor laws. To the extent equitable tolling operates to toll claims by the
21 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
22 SUB-CLASS PERIOD should be adjusted accordingly.

23 42. DEFENDANT maintains records from which the Court can ascertain and identify
24 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS
25 Members have been systematically, intentionally and uniformly misclassified as exempt as a
26 matter of DEFENDANT's corporate policies, practices and procedures. PLAINTIFF will seek
27 leave to amend the Complaint to include these additional job titles when they have been
28 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 fails to pay overtime compensation
6 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
7 the California Labor Code and California regulations and the applicable
8 California Wage Order;
- 9 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
10 non-exempt employees entitled to overtime compensation for overtime
11 worked under the overtime pay requirements of California law;
- 12 (c) Whether DEFENDANT's policy and practice of classifying the
13 CALIFORNIA LABOR SUB-CLASS Members as exempt from overtime
14 compensation and failing to pay the CALIFORNIA LABOR SUB-CLASS
15 Members overtime violate applicable provisions of California law;
- 16 (d) Whether DEFENDANT unlawfully fails to keep and furnish
17 CALIFORNIA LABOR SUB-CLASS Members with accurate records of
18 overtime worked; and,
- 19 (e) The proper measure of damages and penalties owed to the members of the
20 CALIFORNIA LABOR SUB-CLASS.

21 45. DEFENDANT, as a matter of corporate policy, practice and procedure,
22 erroneously classifies all Case Managers as exempt from overtime wages and other labor laws.
23 All Case Managers, including PLAINTIFF, perform the same finite set of tasks and are paid by
24 DEFENDANT according to company procedures, which, as alleged herein above, fails to
25 correctly pay overtime compensation. This business practice has been applied to each and every
26 member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this
27 conduct can be adjudicated on a class-wide basis.

28 46. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS

1 under California law by:

- 2 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
3 failing to pay PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUB-CLASS the correct overtime pay for a workday longer than
5 eight (8) hours and/or a workweek longer than forty (40) hours for which
6 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 7 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
8 members of the CALIFORNIA LABOR SUB-CLASS who are improperly
9 classified as exempt with an accurate itemized statement in writing
10 showing the gross wages earned, the net wages earned, all applicable
11 hourly rates in effect during the pay period and the corresponding amount
12 of time worked at each hourly rate by the employee when these employees
13 worked overtime from time to time in a pay period;
- 14 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
15 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
16 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
17 the legally required rest breaks; and,
- 18 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
19 the CALIFORNIA CLASS members with necessary expenses incurred in
20 the discharge of their job duties.

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

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

1 LABOR SUB-CLASS;

2 (c) The claims of the representative PLAINTIFF are typical of the claims of
3 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
4 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
5 was improperly classified as exempt and denied overtime pay as a result
6 of DEFENDANT's systematic classification practices. PLAINTIFF and
7 all the other members of the CALIFORNIA LABOR SUB-CLASS
8 sustained economic injuries arising from DEFENDANT's violations of the
9 laws of California; and,

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

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

20 (a) Without class certification and determination of declaratory, statutory and
21 other legal questions within the class format, prosecution of separate
22 actions by individual members of the CALIFORNIA LABOR SUB-
23 CLASS will create the risk of:

24 1) Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA LABOR SUB-CLASS which
26 would establish incompatible standards of conduct for the parties
27 opposing the CALIFORNIA LABOR SUB-CLASS; or,

28 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 uniformly classified and treated the Case Managers as exempt and, thereafter, uniformly failed to take proper steps to determine whether the Case Managers were properly classified as exempt, and thereby denied these employees overtime wages 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:

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

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

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

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

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

24 (a) The questions of law and fact common to the CALIFORNIA LABOR
25 SUB-CLASS predominate over any question affecting only individual
26 CALIFORNIA LABOR SUB-CLASS Members;

27 (b) A Class Action is superior to any other available method for the fair and
28 efficient adjudication of the claims of the members of the CALIFORNIA

1 LABOR SUB-CLASS because in the context of employment litigation a
2 substantial number of individual CALIFORNIA LABOR SUB-CLASS
3 Members will avoid asserting their rights individually out of fear of
4 retaliation or adverse impact on their employment;

5 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
6 numerous that it is impractical to bring all members of the CALIFORNIA
7 LABOR SUB-CLASS before the Court;

8 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
9 Members, will not be able to obtain effective and economic legal redress
10 unless the action is maintained as a Class Action;

11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the acts of unfair competition, statutory violations and
13 other improprieties, and in obtaining adequate compensation for the
14 damages and injuries which DEFENDANT's actions have inflicted upon
15 the CALIFORNIA LABOR SUB-CLASS;

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

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

23 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
24 ascertainable from the business records of DEFENDANT. The
25 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
26 CLASS Members who were employed by DEFENDANT in California
27 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

28 (i) Class treatment provides manageable judicial treatment calculated to bring

1 a efficient and rapid conclusion to all litigation of all wage and hour
2 related claims arising out of the conduct of DEFENDANT.

3
4 **JURISDICTION AND VENUE**

5 50. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc §
6 410.10 and Cal. Business & Professions Code § 17203. This action is brought as a Class Action
7 on behalf of similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc.
8 § 382.

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

15
16 **FIRST CAUSE OF ACTION**

17 **For Unlawful Business Practices**

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

19 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

20 52. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
22 Complaint.

23 53. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
24 Code § 17021.

25 54. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
26 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
27 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
28 competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair

1 competition may be enjoined in any court of competent jurisdiction. The court
2 may make such orders or judgments, including the appointment of a receiver,
3 as may be necessary to prevent the use or employment by any person of any
4 practice which constitutes unfair competition, as defined in this chapter, or as
may be necessary to restore to any person in interest any money or property, real
or personal, which may have been acquired by means of such unfair
competition.

5 California Business & Professions Code § 17203.

6 55. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to, the
8 applicable Wage Order(s), the California Code of Regulations, and the California Labor Code
9 Sections 204, 210, 226.7, 510, 512, 1194, 1198 & 2802, and for which this Court should issue
10 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
11 necessary to prevent and remedy the conduct held to constitute unfair competition, including
12 restitution of wages wrongfully withheld.

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

18 57. By the conduct alleged herein, DEFENDANT's practices are deceptive and
19 fraudulent in that DEFENDANT's uniform policy and practice is to represent to PLAINTIFF
20 and other CALIFORNIA CLASS Members that they are exempt from overtime pay when in fact
21 these representations are false and likely to deceive, for which this Court should issue injunctive
22 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
23 wrongfully withheld.

24 58. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
25 and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other
26 members of the CALIFORNIA CLASS to be underpaid during their employment with
27 DEFENDANT.

28 59. By the conduct alleged herein, DEFENDANT's practices are also unfair and

1 deceptive in that DEFENDANT's policies, practices and procedures fail to provide mandatory
2 meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

3 60. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
5 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
6 for each workday in which a second off-duty meal period was not timely provided for each ten
7 (10) hours of work.

8 61. PLAINTIFF further demands on behalf of herself and on behalf of each
9 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
10 was not timely provided as required by law.

11 62. By and through the unlawful and unfair business practices described herein,
12 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
13 other members of the CALIFORNIA CLASS and have deprived them of valuable rights and
14 benefits guaranteed by law and contract, all to the detriment of these employees and to the
15 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors
16 who comply with the law.

17 63. All the acts described herein as violations of, among other things, the California
18 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,
19 are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and
20 unscrupulous, and are likely to deceive employees, as herein alleged, and thereby constitute
21 deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§
22 17200, *et seq.*

23 64. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
24 and do, seek such relief as may be necessary to restore to them the money and property which
25 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
27 unfair business practices, including earned but unpaid overtime wages for all overtime worked.

28 65. PLAINTIFF and the other members of the CALIFORNIA CLASS are further

1 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
2 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
3 engaging in any unlawful and unfair business practices in the future.

4 66. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
5 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
6 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
7 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
8 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
9 irreparable legal and economic harm unless DEFENDANT are restrained from continuing to
10 engage in these unlawful and unfair business practices.

11 **SECOND CAUSE OF ACTION**

12 **For Failure To Pay Overtime Compensation**

13 **[Cal. Lab. Code §§ 510, 1194 and 1198]**

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

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

20 68. Cal. Lab. Code § 510 states in relevant part:

21 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
22 in one workday and any work in excess of 40 hours in any one workweek and the
23 first eight hours worked on the seventh day of work in any one workweek shall
24 be compensated at the rate of no less than one and one-half times the regular rate
25 of pay for an employee. Any work in excess of 12 hours in one day shall be
26 compensated at the rate of no less than twice the regular rate of pay for an
27 employee. In addition, any work in excess of eight hours on any seventh day of
28 a workweek shall be compensated at the rate of no less than twice the regular rate
of pay of an employee.

26 69. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of
27 labor is entitled to one day's rest therefrom in seven."

28 70. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees

1 to work more than six days in seven."

2 71. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime
3 rate of compensation required to be paid to a nonexempt full-time salaried employee, the
4 employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

5 72. Cal. Lab. Code § 1194 states:

6 Notwithstanding any agreement to work for a lesser wage, any employee
7 receiving less than the legal minimum wage or the legal overtime compensation
8 applicable to the employee is entitled to recover in a civil action the unpaid
balance of the full amount of this minimum wage or overtime compensation,
including interest thereon, reasonable attorney's fees, and costs of suit.

9 73. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard
10 conditions of labor fixed by the commission shall be the maximum hours of work and the
11 standard conditions of labor for employees. The employment of any employee for longer hours
12 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

13 74. DEFENDANT has intentionally and uniformly designated certain employees as
14 "exempt" employees, by their job title alone and without regard to DEFENDANT's realistic
15 expectations and actual overall requirements of the job, including PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS who work on the production and non-
17 managerial side of DEFENDANT's business. This is done in an illegal attempt to avoid
18 payment of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial
19 Welfare Commission requirements.

20 75. For an employee to be exempt as a bona fide "executive," all the following criteria
21 must be met and DEFENDANT has the burden of proving that:

- 22 (a) The employee's primary duty must be management of the enterprise, or of a
23 customarily recognized department or subdivision; and,
24 (b) The employee must customarily and regularly direct the work of at least two (2)
25 or more other employees; and,
26 (c) The employee must have the authority to hire and fire, or to command particularly
27 serious attention to his or her recommendations on such actions affecting other
28 employees; and,

1 (d) The employee must customarily and regularly exercise discretion and independent
2 judgment; and,

3 (e) The employee must be primarily engaged in duties which meet the test of
4 exemption.

5 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they
6 all fail to meet the requirements of being an "executive" within the meaning of the applicable
7 Wage Order.

8 76. For an employee to be exempt as a bona fide "administrator," all of the following
9 criteria must be met and DEFENDANT has the burden of proving that:

10 (a) The employee must perform office or non-manual work directly related to
11 management policies or general business operation of the employer; and,

12 (b) The employee must customarily and regularly exercise discretion and independent
13 judgment; and,

14 (c) The employee must regularly and directly assist a proprietor or an exempt
15 administrator; or,

16 (d) The employee must perform, under only general supervision, work requiring
17 special training, experience, or knowledge; or,

18 (e) The employee must execute special assignments and tasks under only general
19 supervision; and,

20 (f) The employee must be primarily engaged in duties which meet the test of
21 exemption.

22 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because
23 they all fail to meet the requirements for being an "administrator" under the applicable Wage
24 Order.

25 77. The Industrial Welfare Commission, in Wage Order 4-2001, at section
26 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied
27 with to place an employee in the "professional" exempt category. For an employee to be exempt
28 as a bona fide "professional," all the following criteria must be met and DEFENDANT has the

1 burden of proving that:

2 (a) The employee is primarily engaged in an occupation commonly recognized as a
3 learned or artistic profession. For the purposes of this subsection, "learned or
4 artistic profession" means an employee who is primarily engaged in the
5 performance of:

- 6 1) Work requiring knowledge of an advanced type in a field or science or
7 learning customarily acquired by a prolonged course of specialized
8 intellectual instruction and study, as distinguished from a general
9 academic education and from an apprenticeship, and from training in the
10 performance of routine mental, manual, or physical processes, or work that
11 is an essential part or necessarily incident to any of the above work; or,
12 2) Work that is original and creative in character in a recognized field of
13 artistic endeavor, and the result of which depends primarily on the
14 invention, imagination or talent of the employee or work that is an
15 essential part of or incident to any of the above work; and,
16 3) Whose work is predominately intellectual and varied in character (as
17 opposed to routine mental, manual, mechanical, or physical work) and is
18 of such character cannot be standardized in relation to a given period of
19 time.

20 (b) The employee must customarily and regularly exercise discretion and independent
21 judgment; and,

22 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
23 state minimum wage for full-time employment.

24 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they
25 all fail to meet the requirements of being a "professional" within the meaning of the applicable
26 Wage Order.

27 78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
28 do not fit the definition of an exempt executive, administrative, or professional employee

1 because:

2 (a) They did not work as executives or administrators; and,

3 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other
4 members of the CALIFORNIA LABOR SUB-CLASS because they did not meet
5 all the applicable requirements to work under the professional exemption for the
6 reasons set forth above in this Complaint.

7 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF, and the
8 other members of the CALIFORNIA LABOR SUB-CLASS, work more than eight (8) hours
9 in a workday and/or more than forty (40) hours in a workweek.

10 80. DEFENDANT fails to pay PLAINTIFF, and the other members of the
11 CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they worked in
12 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and
13 1198, even though PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
14 CLASS, are required to work, and do in fact work, overtime.

15 81. By virtue of DEFENDANT's unlawful failure to pay additional compensation
16 to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for their
17 overtime work, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
18 CLASS, have suffered, and will continue to suffer, an economic injury in amounts which are
19 presently unknown to them and which will be ascertained according to proof at trial.

20 82. DEFENDANT knew or should have known that PLAINTIFF, and the other
21 members of the CALIFORNIA LABOR SUB-CLASS, are misclassified as exempt and
22 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, not to pay
23 them for their overtime labor as a matter of uniform corporate policy, practice and procedure.

24 83. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR
25 SUB-CLASS, request recovery of overtime compensation according to proof, interest, costs,
26 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
27 by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation is determined
28 to be owed to members of the CALIFORNIA LABOR SUB-CLASS who have terminated their

1 employment, these employees would also be entitled to waiting time penalties under Cal. Lab.
2 Code § 203, which penalties are sought herein. Further, PLAINTIFF, and the other members
3 of the CALIFORNIA LABOR SUB-CLASS, are entitled to seek and recover statutory costs.

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

12 13 **THIRD CAUSE OF ACTION**

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

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

16 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
17 **Defendants)**

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

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

1 provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally
2 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
3 business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR
4 SUB-CLASS therefore forfeit meal breaks without additional compensation and in accordance
5 with DEFENDANT's strict corporate policy and practice.

6 87. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
7 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
8 CLASS Members who are not provided a meal period, in accordance with the applicable Wage
9 Order, one additional hour of compensation at each employee's regular rate of pay for each
10 workday that a meal period is not provided.

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

15
16 **FOURTH CAUSE OF ACTION**

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

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

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

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

24 90. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are
25 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
26 Further, these employees are denied their first rest periods of at least ten (10) minutes for some
27 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
28 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or

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

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

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

14
15 **FIFTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 226]**

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

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

23 94. Cal. Labor Code § 226 provides that an employer must furnish employees with
24 an "accurate itemized" statement in writing showing:

25 (1) gross wages earned,

26 (2) total hours worked by the employee, except for any employee whose compensation
27 is solely based on a salary and who is exempt from payment of overtime under
28 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare

1 Commission,

2 (3) the number of piecerate units earned and any applicable piece rate if the employee
3 is paid on a piece-rate basis,

4 (4) all deductions, provided that all deductions made on written orders of the employee
5 may be aggregated and shown as one item,

6 (5) net wages earned,

7 (6) the inclusive dates of the period for which the employee is paid,

8 (7) the name of the employee and his or her social security number, except that by
9 January 1, 2008, only the last four digits of his or her social security number or an
10 employee identification number other than a social security number may be shown on
11 the itemized statement,

12 (8) the name and address of the legal entity that is the employer, and

13 (9) all applicable hourly rates in effect during the pay period and the corresponding
14 number of hours worked at each hourly rate by the employee.

15 95. When PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
16 work overtime, DEFENDANT also failed to provide PLAINTIFF and the other CALIFORNIA
17 LABOR SUB-CLASS Members with a wage statement in writing that accurately sets forth
18 gross wages earned, all applicable hourly rates in effect during the pay period and the
19 corresponding amount of time worked at each hourly rate by the PLAINTIFF and the other
20 CALIFORNIA LABOR SUB-CLASS Members. This conduct violated California Labor Code
21 § 226. The pay stub also does not accurately display anywhere PLAINTIFF's and the other
22 CALIFORNIA LABOR SUB-CLASS Members' overtime work and applicable rates of
23 overtime pay for the pay period.

24 96. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
25 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
26 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
27 true time worked and the amount of employment taxes which were not properly paid to state and
28 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and

1 the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated
2 damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for
3 each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according
4 to proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFF and each
5 respective member of the CALIFORNIA LABOR SUB-CLASS herein).

6
7 **SIXTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 2802]**

10 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
11 **Defendants)**

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

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

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

19 99. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
20 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
21 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
22 benefit. Specifically, DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA
23 LABOR SUB-CLASS members for expenses which include, but are not limited to, costs related
24 to using their personal home offices and personal cell phones all on behalf of and for the benefit
25 of DEFENDANT. DEFENDANT's policy, practice and procedure is to not reimburse
26 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting
27 from using their personal home offices and personal cell phones to work remotely for
28 DEFENDANT within the course and scope of their employment for DEFENDANT. These

1 expenses are necessary to complete their principal job duties. DEFENDANT is estopped by
2 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses are
3 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
4 members, DEFENDANT fails to indemnify and reimburse PLAINTIFF and the CALIFORNIA
5 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
6 laws and regulations of California.

7 100. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
8 by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
9 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
10 at the statutory rate and costs under Cal. Lab. Code § 2802.

11
12 **SEVENTH CAUSE OF ACTION**

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

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

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

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

20 102. Cal. Lab. Code § 200 provides, in relevant part, that:
As used in this article:

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

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

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

28 104. Cal. Lab. Code § 202 provides, in relevant part, that:

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

11 105. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
12 CLASS Members' employment contract.

13 106. Cal. Lab. Code § 203 provides, in relevant part, that:

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

20 107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
21 Members has terminated and DEFENDANT has not tendered payment of all wages owed as
22 required by law. Additionally, at all times during the term of PLAINTIFF's employment with
23 DEFENDANT, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members earned and
24 accrued vested vacation and holiday time on the date of their termination pursuant to
25 DEFENDANT's uniform vacation policies and applicable California law. The amount of
26 vacation pay PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members earned
27 and accumulated is evidenced by DEFENDANT's business records. Additionally,
28 DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFF 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 rate of pay,
DEFENDANT underpaid vacation wages to PLAINTIFF and other CALIFORNIA LABOR
SUB-CLASS Members at their base rates of pay, instead of including all of PLAINTIFF's and
CALIFORNIA LABOR SUB-CLASS Members' non-discretionary incentive compensation into
the vacation wage payment calculations. DEFENDANT failed to specify in DEFENDANT's

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

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

26
27
28 **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF prays 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 California Code of Civil Procedure § 382;
- B) An order requiring DEFENDANT to correctly calculate and pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS;
- C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to the PLAINTIFF and to the other members of the CALIFORNIA CLASS according to proof; and,
- D) An order temporarily, preliminarily, and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein.

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action pursuant to California Code of Civil Procedure § 382;
- B) Compensatory damages, according to proof at trial, for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF

1 and the other members of the CALIFORNIA CLASS with all legally required
2 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
3 rest breaks; and,

4 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
5 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
6 costs of suit.

7 3. On all claims:

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

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

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

13 Dated: February 16, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

14
15 By: _____
16 Norman B. Blumenthal
17 Nicholas J. De Blouw
18 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

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

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

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