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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

MICHAEL TRUJILLO, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

MCMaster-CARR SUPPLY COMPANY,
a Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 24STCV10790

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

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200;
 2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
 3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
 4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
 8. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB CODE §§201-203, 233, 246;
 9. FAILURE TO COMPLY WITH CALIFORNIA QUOTA LAWS IN VIOLATION OF LABOR CODE § 2100; and
 10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, et seq.].
- DEMAND FOR A JURY TRIAL**

1 Michael Trujillo (“PLAINTIFF”), an individual, on behalf of himself and all other similarly
2 situated current and former employees alleges on information and belief, except for his own acts and
3 knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. McMaster-Carr Supply Company (“DEFENDANT”) is that a corporation at all relevant
7 times mentioned herein conducted and continues to conduct substantial business in California.

8 2. DEFENDANT is a private American supplier of hardware, tools, raw materials,
9 industrial materials, and maintenance equipment

10 3. PLAINTIFF is currently employed by DEFENDANT in California. PLAINTIFF’s
11 employment started in July of 2012 with Defendant. PLAINTIFF at all times relevant mentioned herein
12 has been classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled
13 to the legally required meal and rest periods and payment of minimum and overtime wages due for all
14 time worked.

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

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
24 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to
25 lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was an
26 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to
27 retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF
28 and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by

1 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
2 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current
3 unlawful conduct, and all other appropriate legal and equitable relief.

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

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

20 21 **THE CONDUCT**

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
23 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
24 meaning the time during which an employee is subject to the control of an employer, including all
25 the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and
26 CALIFORNIA CLASS Members to work without paying them for all the time they are under
27 DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while
28 clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was

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

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

20 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members'
21 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and
22 other CALIFORNIA CLASS Members incentive wages based on their performance for
23 DEFENDANT. The non-discretionary incentive program provided all employees paid on an hourly
24 basis with incentive compensation when the employees met the various performance goals set by
25 DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime and
26 meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS Members,
27 DEFENDANT failed to include the incentive compensation as part of the employees' "regular rate
28 of pay" for purposes of calculating overtime pay and meal and rest break premium pay.

1 Management and supervisors described the incentive program to potential and new employees as
2 part of the compensation package. As a matter of law, the incentive compensation received by
3 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the “regular rate of
4 pay.” The failure to do so has resulted in a underpayment of overtime compensation and meal and
5 rest break premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

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

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

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

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

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

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

12 15. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
13 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
14 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
15 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
16 underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of
17 pay.

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

22 17. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
23 regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
24 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
25 was paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA
26 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
27 Section 246.

1 18. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
2 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time
3 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and
4 based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
5 PLAINTIFF and members of the CALIFORNIA CLASS whose employment has separated are
6 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

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

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

27 21. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
28 Members as a business expense, were required by DEFENDANT to use their own personal cellular

1 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are
2 not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their
3 personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other
4 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular
5 phones. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other
6 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included,
7 but were not limited to, costs related to the use of their personal cellular phones all on behalf of and
8 for the benefit of DEFENDANT.

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

19 23. DEFENDANT did not provide a written description of each quota to which
20 PLAINTIFF and CALIFORNIA CLASS Members were subject, including the quantified number of
21 tasks to be performed or materials to be produced or handled, within the defined time period, and
22 any potential adverse employment action that could result from failure to meet the quota

23 24. DEFENDANT also required PLAINTIFF and CALIFORNIA CLASS Members to
24 meet a quota that prevents compliance with meal or rest periods and use of bathroom facilities,
25 including reasonable travel time to and from bathroom facilities.

26 25. DEFENDANT also took adverse employment action against CALIFORNIA CLASS
27 Members for failure to meet such quotas.

1 26. PLAINTIFF is informed and believes that all of the above practices he experienced
2 were not unique to him but rather were companywide policies and practices at all distribution
3 facilities in the State of California and were suffered by all non-exempt employees.

4 27. PLAINTIFF is informed and believes that the unlawful wage and hour policies
5 described in this action are set centrally and are applicable through-out California.

6 28. PLAINTIFF is informed and believes that the unlawful wage and hour policies
7 described in this action are still ongoing.

8
9
JURISDICTION AND VENUE

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

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

19
20
THE CALIFORNIA CLASS

21 31. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
22 Business Practices pursuant to Cal. Lab. Code §§ 2101, 2102, and 2103 and Cal. Bus. & Prof. Code
23 §§ 17200 (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
24 California class, defined as all individuals who are or previously were employed by DEFENDANT
25 in California, including any employees staffed with DEFENDANT by a third party, and classified as
26 non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
27 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
28

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

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

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

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

21 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
22 CLASS Members is impracticable.

23 36. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law
24 by:

- 25 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
26 Code §§ 17200, (the "UCL"), by unlawfully, unfairly and/or deceptively
27 having in place company policies, practices and procedures that failed to
28 record and pay PLAINTIFF and the other members of the CALIFORNIA

1 CLASS for all time worked, including minimum wages owed and overtime
2 wages owed for work performed by these employees; and,

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

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

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

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

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

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

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

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

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

and incidental equitable relief as may be necessary to prevent and
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 the
DEFENDANT; and/or,
- B. Adjudications with respect to individual members of the
CALIFORNIA CLASS would as a practical matter be
dispositive of the interests of the other members not parties to
the adjudication or substantially impair or impede their ability
to protect their interests;

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

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

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

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

- 12 (a) The questions of law and fact common to the CALIFORNIA CLASS
13 predominate over any question affecting only individual CALIFORNIA
14 CLASS Members because the DEFENDANT's employment practices are
15 applied with respect to the CALIFORNIA CLASS;
- 16 (b) A Class Action is superior to any other available method for the fair and
17 efficient adjudication of the claims of the members of the CALIFORNIA
18 CLASS because in the context of employment litigation a substantial number
19 of individual CALIFORNIA CLASS Members will avoid asserting their
20 rights individually out of fear of retaliation or adverse impact on their
21 employment;
- 22 (c) The members of the CALIFORNIA CLASS are so numerous that it is
23 impractical to bring all members of the CALIFORNIA CLASS before the
24 Court;
- 25 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able
26 to obtain effective and economic legal redress unless the action is maintained
27 as a Class Action;
- 28

- 1 (e) There is a community of interest in obtaining appropriate legal and equitable
2 relief for the acts of unfair competition, statutory violations and other
3 improprieties, and in obtaining adequate compensation for the damages and
4 injuries which DEFENDANT's actions have inflicted upon the
5 CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of the
8 CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable to
10 the CALIFORNIA CLASS, thereby making final class-wide relief
11 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 12 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
13 the business records of DEFENDANT; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to bring a
15 efficient and rapid conclusion to all litigation of all wage and hour related
16 claims arising out of the conduct of DEFENDANT as to the members of the
17 CALIFORNIA CLASS.

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

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26 **THE CALIFORNIA LABOR SUB-CLASS**

27 41. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
28 and Ninth causes Action on behalf of a California sub-class, defined as all members of the

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

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

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

24 44. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
25 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

26 45. Common questions of law and fact exist as to members of the CALIFORNIA
27 LABOR SUB-CLASS, including, but not limited, to the following:
28

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

13 46. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
14 California law by:

- 15 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF
16 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due
17 for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab.
18 Code § 1194;
19 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 by failing to accurately
20 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
21 CLASS the correct minimum wage pay for which DEFENDANT is liable
22 pursuant to Cal. Lab. Code §§ 1194 and 1197;
23 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
24 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
25 itemized statement in writing showing the corresponding correct amount of
26 wages earned by the employee;
27 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
28 and the other members of the CALIFORNIA LABOR SUB-CLASS with all

1 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
2 the legally required off-duty rest breaks;

3 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
4 an employee is discharged or quits from employment, the employer must pay
5 the employee all wages due without abatement, by failing to tender full
6 payment and/or restitution of wages owed or in the manner required by
7 California law to the members of the CALIFORNIA LABOR SUB-CLASS
8 who have terminated their employment; and,

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

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

14 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
15 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
16 Members is impracticable and the disposition of their claims as a class will
17 benefit the parties and the Court;

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

22 (c) The claims of the representative PLAINTIFF are typical of the claims of each
23 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all
24 the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-
25 exempt employee paid on an hourly basis who was subjected to the
26 DEFENDANT's practice and policy which failed to pay the correct amount
27 of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF
28 sustained economic injury as a result of DEFENDANT's employment

1 practices. PLAINTIFF and the members of the CALIFORNIA LABOR
2 SUB-CLASS were and are similarly or identically harmed by the same
3 unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT;
4 and,

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

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

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

- 1 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
2 refused to act on grounds generally applicable to the CALIFORNIA LABOR
3 SUB-CLASS, making appropriate class-wide relief with respect to the
4 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails
5 to pay all wages due. Including the correct wages for all time worked by the
6 members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- 7 (c) Common questions of law and fact predominate as to the members of the
8 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
9 violations of California Law as listed above, and predominate over any
10 question affecting only individual CALIFORNIA LABOR SUB-CLASS
11 Members, and a Class Action is superior to other available methods for the
12 fair and efficient adjudication of the controversy, including consideration of:
- 13 1) The interests of the members of the CALIFORNIA LABOR SUB-
14 CLASS in individually controlling the prosecution or defense of
15 separate actions in that the substantial expense of individual actions
16 will be avoided to recover the relatively small amount of economic
17 losses sustained by the individual CALIFORNIA LABOR SUB-
18 CLASS Members when compared to the substantial expense and
19 burden of individual prosecution of this litigation;
- 20 2) Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:
- 22 A. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA LABOR SUB-
24 CLASS, which would establish incompatible standards of
25 conduct for the DEFENDANT; and/or,
- 26 B. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28 matter be dispositive of the interests of the other members not

parties to the adjudication or substantially impair or impede
their ability to protect their interests;

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

49. 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 LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (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 LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

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

25
26 **FIRST CAUSE OF ACTION**

27 **For Unlawful Business Practices**

28 **[Cal. Lab. Code §§ 2101, 2102, and 2103; Cal. Bus. And Prof. Code §§ 17200]**

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

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

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

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

11 Any person who engages, has engaged, or proposes to engage in unfair competition
12 may be enjoined in any court of competent jurisdiction. The court may make such
13 orders or judgments, including the appointment of a receiver, as may be necessary to
14 prevent the use or employment by any person of any 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.

15 Cal. Bus. & Prof. Code § 17203.

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

24 54. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
25 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
26 substantially injurious to employees, and were without valid justification or utility for which this
27 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
28 Business & Professions Code, including restitution of wages wrongfully withheld.

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

12 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
13 and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other
14 members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANT.

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

20 58. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
21 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
22 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
23 workday in which a second off-duty meal period was not timely provided for each ten (10) hours of
24 work.

25 59. PLAINTIFF further demands on behalf of himself and each member of the
26 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty
27 paid rest period was not timely provided as required by law.
28

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

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

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

17 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled
18 to, and do, seek a declaration that the described business practices are unlawful, unfair and
19 deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in
20 any unlawful and unfair business practices in the future.

21 64. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
24 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful
27 and unfair business practices.
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1 by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT
2 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
3 of the California Labor Code, the Industrial Welfare Commission requirements and other applicable
4 laws and regulations.

5 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the
7 correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

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

16 17 **THIRD CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

19 **[Cal. Lab. Code § 510]**

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

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

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

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

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

9 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
11 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including
12 overtime work.

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

20 84. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an
23 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
24 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
25 and regulations. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full
27 compensation for overtime worked.

28 85. Cal. Lab. Code § 515 sets out various categories of employees who are exempt

1 from the overtime requirements of the law. None of these exemptions are applicable to the
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to
4 a valid collective bargaining agreement that would preclude the causes of action contained herein
5 this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA
6 LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable rights
7 provided by the State of California.

8 86. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
9 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
10 worked that they are entitled to, constituting a failure to pay all earned wages.

11 87. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of the
12 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
13 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
14 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 were required to work, and did in fact work, overtime as to which DEFENDANT failed to
16 accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
17 employees.

18 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
19 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 for the true amount of time they worked, PLAINTIFF and the other members of the CALIFORNIA
21 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
22 which are presently unknown to them and which will be ascertained according to proof at trial.

23 89. DEFENDANT knew or should have known that PLAINTIFF and the other members
24 of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.
25 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
26 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
27 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
28 CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

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FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

20 94. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
21 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
22 Members who were not provided a meal period, in accordance with the applicable Wage Order, one
23 additional hour of compensation at each employee's regular rate of pay for each workday that a
24 meal period was not provided.

25 95. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
27 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
28

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

8 97. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
9 time to time required to work in excess of four (4) hours without being provided ten (10) minute
10 rest periods. Further, these employees from time to time were denied their first rest periods of at
11 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second
12 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
13 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
14 ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-
15 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their
16 rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
17 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

18 98. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
19 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
20 Members who were not provided a rest period, in accordance with the applicable Wage Order, one
21 additional hour of compensation at each employee's regular rate of pay for each workday that rest
22 period was not provided.

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

26 **SIXTH CAUSE OF ACTION**

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

[Cal. Lab. Code § 226]

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

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

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

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

102. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours

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

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

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23 **SEVENTH CAUSE OF ACTION**

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

25 **[Cal. Lab. Code § 2802]**

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

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

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

5 An employer shall indemnify his or her employee for all necessary expenditures or
6 losses incurred by the employee in direct consequence of the discharge of his or her
7 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.

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

25 107. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
26 himself and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties
27
28

1 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
2 statutory rate and costs under Cal. Lab. Code § 2802.

3
4 **EIGHTH CAUSE OF ACTION**

5 **For Failure to Pay Sick Pay Wages**

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

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

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

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

24 110. As a matter of policy and practice, DEFENDANT pays sick pay wages to
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the incorrect
26 rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
27 regularly use accrued sick leave in the workweeks in which they also earn non-hourly remuneration.
28

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

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

21 112. As alleged herein and as a matter of policy and practice, DEFENDANT
22 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other members
23 of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result,
24 DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246, among other Labor Code
25 provisions. PLAINTIFF is informed and believes that DEFENDANT was advised by skilled
26 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to
27 PLAINTIFF's allegations, especially since the California Supreme Court has explained that
28 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is entitled

1 as a part of his or her compensation, including money, room, board, clothing, vacation pay, *and sick*
2 *pay.*” *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added).

3 Because DEFENDANT willfully fails to timely pay PLAINTIFF and the other members of the
4 CALIFORNIA LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to
5 applicable penalties.

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

10
11 **NINTH CAUSE OF ACTION**

12 **Failure to Comply with California Quota Laws**

13 **[Cal. Labor Code § 2100]**

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

16 114. PLAINTIFF re-alleges and incorporates by reference each and every
17 allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

18 115. Labor Code § 2101 provides that each employer that employs 100 or
19 more employees at a single warehouse distribution center in California, or 1,000 employees at one
20 or more warehouse distribution centers in California, shall provide upon hire or within 30 days of
21 the effective date of this part, a written description of each quota to which the employee is subject,
22 including the quantified number of tasks to be performed or materials to be produced or handled,
23 within the defined time period, and any potential adverse employment action that could result from
24 failure to meet the quota.

25 116. Labor Code § 2102 provides that an employee shall not be required to meet a quota
26 that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable
27 travel time to and from bathroom facilities, or occupational health and safety laws in the Labor
28 Code or division standards. An employer shall not take adverse employment action against an

1 employee for failure to meet a quota that does not allow a worker to comply with meal and rest
2 periods, or occupational health and safety laws in the Labor Code or division standards, or for
3 failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

4 117. Labor Code § 2103 provides:

5 (a) Any actions taken by an employee to comply with occupational health
6 and safety laws in the Labor Code or division standards shall be considered
7 time on task and productive time for purposes of any quota or monitoring
8 system.

9 (b) Notwithstanding subdivision (a), consistent with existing law, meal
10 and rest breaks are not considered productive time unless the employee is
11 required to remain on call.

12 118. DEFENDANT failed to provide employees with a written description of applicable
13 quotas and any potential adverse employment action that could result from failure to meet the quota.
14 DEFENDANT also required PLAINTIFF and CALIFORNIA CLASS Members to meet quotas that
15 prevented compliance with meal and rest periods and use of bathroom facilities, including
16 reasonable travel time to and from bathroom facilities. Similarly, the quota system prevented
17 PLAINTIFF and other CALIFORNIA CLASS members from taking breaks because it failed to
18 account for or treat time traveling to and from break areas as productive in the quota such that
19 PLAINTIFF and other CALIFORNIA CLASS Members were penalized under the quota for taking
20 breaks.

21 119. DEFENDANT took adverse employment actions against PLAINTIFF and other
22 Class members for failure to meet a quota that did not allow them to take meal and rest periods and
23 use the bathroom facilities, including reasonable travel time to and from bathroom facilities, and for
24 failure to meet a quota that had never been disclosed to them as required by § 2101.

25 120. DEFENDANT took adverse employment actions against PLAINTIFF and other
26 CALIFORNIA CLASS Members, for failure to meet a quota that did not allow them to take meal
27 and rest periods and use the bathroom facilities, including reasonable travel time to and from
28 bathroom facilities, and for failure to meet a quota that had never been disclosed to them as required

1 by § 2101. PLAINTIFF on behalf of himself and other CALIFORNIA CLASS Members seeks
2 injunctive relief for Defendant's violation of the quota laws. PLAINTIFF also seeks costs and
3 reasonable attorneys' fees.

4
5 **TENTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 2698, et seq.]**

8 **(By PLAINTIFF and Against All Defendants)**

9 121. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
10 herein, the prior paragraphs of this Complaint.

11 122. PAGA is a mechanism by which the State of California itself can enforce state labor
12 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
13 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
14 a law enforcement action designed to protect the public and not to benefit private parties. The
15 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
16 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
17 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
18 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
19 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

20 123. PLAINTIFF, and such persons that may be added from time to time who satisfy the
21 requirements and exhaust the administrative procedures under the Private Attorney General Act,
22 brings this Representative Action on behalf of the State of California with respect to herself and all
23 individuals who are or previously were employed by DEFENDANT in California, including any
24 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees
25 ("AGGRIEVED EMPLOYEES") during the time period of March 8, 2023 until a date as
26 determined by the Court (the "PAGA PERIOD").

27 124. On March 8, 2024, PLAINTIFF gave written notice by electronic mail to the Labor
28 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the

specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein (*PAGA Notice only without draft complaint*). The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

125. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to pay minimum wages, (c) failed to pay overtime wages, (d) failed to reimburse employees for required expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204, *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2107(d), 2108, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)- (B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5. and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

- 1 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS
2 as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 3 B) An order temporarily, preliminarily and permanently enjoining and restraining
4 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 5 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
6 from compensation due to PLAINTIFF and the other members of the CALIFORNIA
7 CLASS; and,
- 8 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
9 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and
10 to the other members of the CALIFORNIA CLASS.

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

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

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

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

7 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

8 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
9 General Act of 2004.

10 4. On all claims:

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

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

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

15
16 Dated: April 7, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

17
18 By: /s/ Nicholas J. De Blouw

19 Norman B. Blumenthal
Nicholas J. De Blouw

20 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

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

Dated: April 7, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

Attorneys for Plaintiff

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:
1004

March 8, 2024
CA3244

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

McMaster-Carr Supply Company
Certified Mail #9589071052700408542901
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2107(d), 2108, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by McMaster-Carr Supply Company in California, including any employees staffed with McMaster-Carr Supply Company a third party, and classified as non-exempt employees during the time period of March 8, 2023 until a date as determined by the Court. Our offices represent Plaintiff Michael Trujillo (“Plaintiff”) and other Aggrieved Employees in a lawsuit against McMaster-Carr Supply Company (“Defendant”). Plaintiff has been employed by Defendant in California since July of 2012. Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as

required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide 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). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, 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. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2107(d), 2108, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by 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 lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of 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.