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K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
A.Stewart, DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

KRISTINA MURDOCK, NOEL HUDSON,
and ALEXANDRA SOTO, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

ASPEN SURGERY CENTER, LLC, a
Limited Liability Company; SURGERY
PARTNERS, INC., a Corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No. **C21-02047**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR A JURY TRIAL

1 Plaintiffs Kristina Murdock, Noel Hudson and Alexandra Soto (“PLAINTIFFS”) individuals,
2 on behalf of themselves and all other similarly situated current and former employees allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant Aspen Surgery Center, LLC is a limited liability company that at all relevant
8 times mentioned herein conducted and continues to conduct substantial business in the state of
9 California.

10 2. Defendant Surgery Partners, Inc. is a corporation that at all relevant times mentioned
11 herein conducted and continues to conduct substantial business in the state of California.

12 3. Defendants Aspen Surgery Center, LLC and Surgery Partners, Inc. were the joint
13 employers of PLAINTIFFS as evidenced by pay stubs and other company documents and by the
14 company PLAINTIFFS performed work for respectively, and are therefore jointly responsible as
15 employers for the conduct alleged herein, and are therefore collectively referred to herein as
16 "DEFENDANT."

17 4. DEFENDANT provides outpatient surgical care in California.

18 5. Plaintiff Murdock was employed by DEFENDANT in California from December of
19 2015 to April of 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid
20 on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
21 and overtime wages due for all time worked.

22 6. Plaintiff Hudson was employed by DEFENDANT in California from April of 2016 to
23 August of 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
24 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and
25 overtime wages due for all time worked.

26 7. Plaintiff Soto has been employed by DEFENDANT in California since September of
27 2017 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on an
28 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and

1 overtime wages due for all time worked.

2 8. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
3 defined as all individuals who are or previously were employed by Aspen Surgery Center, LLC and/or
4 Surgery Partners, Inc. in California and classified as non-exempt employees (the "CALIFORNIA
5 CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint
6 and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The
7 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
8 dollars (\$5,000,000.00).

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

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

27 11. The agents, servants and/or employees of the Defendants and each of them acting on
28 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,

1 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein
2 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each
3 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally
4 liable to PLAINTIFFS and the other members of the CALIFORNIA CLASS, for the loss sustained as
5 a proximate result of the conduct of the Defendants' agents, servants and/or employees.

6 7 THE CONDUCT

8 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required
9 to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time
10 during which an employee is subject to the control of an employer, including all the time the employee
11 is suffered or permitted to work. DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS
12 Members to work from time to time while they were clocked out for what was supposed to be their off
13 duty meal break. DEFENDANT required PLAINTIFFS and the CALIFORNIA CLASS Members to
14 work off the clock without paying them for all the time they performed duties while on their meal
15 break, specifically by failing to provide enough labor hours to accomplish all the job tasks that
16 DEFENDANT expected PLAINTIFFS and CALIFORNIA CLASS Members to complete on a daily
17 and/or weekly basis. PLAINTIFFS and the CALIFORNIA CLASS also worked off the clock with
18 respect to time spent undergoing mandatory drug testing or any other testing and/or examination
19 required as a condition of employment. Further, PLAINTIFFS and other members of the
20 CALIFORNIA CLASS from time to time were not paid wages for all time worked, including overtime
21 wages, such that in the aggregate employees were underpaid wages as a result of DEFENDANT's
22 pattern and practice of unevenly rounding time worked by its employees. PLAINTIFFS and other
23 CALIFORNIA CLASS Members were also not paid for their work time putting on their work scrubs
24 (which they were not allowed to take home) because they were not paid until they were fully uniformed
25 and clocked in for the day. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members
26 forfeited minimum wage and overtime compensation by from time to time working without their time
27 being accurately recorded and without compensation at the applicable minimum wage and overtime
28 rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS

1 Members for all time worked is evidenced by DEFENDANT's business records.

2 13. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA
3 CLASS Members were also from time to time unable to take off duty meal breaks and were not fully
4 relieved of duty for meal periods. PLAINTIFFS and other CALIFORNIA CLASS Members were from
5 time to time required to perform work as ordered by DEFENDANT for more than five (5) hours during
6 a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide
7 PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period from time to
8 time in which these employees were required by DEFENDANT to work ten (10) hours of work from
9 time to time. PLAINTIFFS and the other CALIFORNIA CLASS Members therefore forfeited meal
10 breaks without additional compensation and in accordance with DEFENDANT's corporate policy and
11 practice.

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

1 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and other
2 CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on Defendant's
3 rule which stated PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work
4 premises during their rest period.

5 15. State law provides that employees must be paid overtime and meal and rest premiums
6 at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS
7 Members were compensated at an hourly rate plus incentive pay that was tied to specific elements of
8 an employee's performance.

9 16. The second component of PLAINTIFFS' and other CALIFORNIA CLASS Members'
10 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS and
11 other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT,
12 including but not limited to shift differential payments and cash in lieu of benefits. The non-
13 discretionary incentive program provided all employees paid on an hourly basis with incentive
14 compensation when the employees met the various performance goals set by DEFENDANT. However,
15 when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to
16 PLAINTIFFS and other CALIFORNIA CLASS Members, DEFENDANT failed to include the
17 incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating
18 overtime pay and meal and rest break premium pay. Management and supervisors described the
19 incentive program to potential and new employees as part of the compensation package. As a matter
20 of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA CLASS
21 Members must be included in the "regular rate of pay." The failure to do so has resulted in an
22 underpayment of overtime compensation and meal and rest break premium pay to PLAINTIFFS and
23 other CALIFORNIA CLASS Members by DEFENDANT.

24 17. DEFENDANT also failed to provide PLAINTIFFS and the other members of the
25 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other
26 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer
27 shall furnish each of his or her employees with an accurate itemized wage statement in writing showing,
28 among other things, gross wages earned and all applicable hourly rates in effect during the pay period

1 and the corresponding amount of time worked at each hourly rate. Aside, from the violations listed
2 above, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
3 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time
4 provided PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements
5 which violated Cal. Lab. Code § 226.

6 18. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
7 employment are due and payable twice during each calendar month, on days designated in advance by
8 the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly requires employers
9 to pay employees all wages owed within Seven (7) days of the close of the payroll period.
10 DEFENDANT from time to time failed to pay PLAINTIFFS and other CALIFORNIA CLASS
11 Members all wages owed to them within seven (7) days of the close of the payroll period.

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

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

27 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
28 employees be calculated by dividing the employee’s total wages, not including overtime premium pay,

1 by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

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

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

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

22 25. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
23 Members as a business expense, were required by DEFENDANT to use their own personal cellular
24 phones and personal vehicles as a result of and in furtherance of their job duties as employees for
25 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost associated with
26 the use of their personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFFS and
27 other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular
28 phones to respond to managers while off the clock (which also results in minimum wage and overtime

1 violations). As a result, in the course of their employment with DEFENDANT, PLAINTIFFS and other
2 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
3 were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the
4 benefit of DEFENDANT.

5 26. In violation of the applicable sections of the California Labor Code and the requirements
6 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
7 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFFS and the
8 other members of the CALIFORNIA CLASS for missed meal and rest periods. This policy and
9 practice of DEFENDANT is intended to purposefully avoid the payment for all time worked as required
10 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over
11 competitors who complied with the law. To the extent equitable tolling operates to toll claims by the
12 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
13 accordingly.

14 27. By reason of this conduct applicable to PLAINTIFFS and all CALIFORNIA CLASS
15 Members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
16 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
17 wide policy and procedure which fails to accurately calculate and record all missed meal and rest
18 periods and failed to pay all minimum and overtime wages due to PLAINTIFFS and other
19 CALIFORNIA CLASS Members. The proper recording of these employees' missed meal and rest
20 breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
21 obligation to meet this burden, DEFENDANT fails to properly calculate and/or pay all required
22 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
23 California Labor Code and regulations promulgated thereunder as herein alleged.

24 28. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally required
25 off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage Order and Labor
26 Code and failed to pay PLAINTIFFS all minimum and overtime wages due to PLAINTIFFS.
27 DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest breaks
28 to PLAINTIFFS and also failed to compensate PLAINTIFFS for PLAINTIFFS's missed meal and rest

1 breaks. The nature of the work performed by the PLAINTIFFS did not prevent PLAINTIFFS from
2 being relieved of all of PLAINTIFFS' duties for the legally required off-duty meal periods. As a result,
3 DEFENDANT's failure to provide PLAINTIFFS with the legally required meal periods is evidenced
4 by DEFENDANT's business records. DEFENDANT also required PLAINTIFFS to work off the clock
5 without paying PLAINTIFFS for all the time PLAINTIFFS were working for DEFENDANT,
6 specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT
7 expected PLAINTIFFS to complete on a daily and/or weekly basis. The amount in controversy for
8 PLAINTIFFS individually do not exceed the sum or value of \$75,000. To date, DEFENDANT has not
9 fully paid PLAINTIFFS for all PLAINTIFFS' wages still owed to PLAINTIFFS or any penalties owed
10 to PLAINTIFFS under California Labor Code § 203.

11 **JURISDICTION AND VENUE**

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

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

22 **THE CALIFORNIA CLASS**

23
24 31. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
25 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
26 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
27 are or previously were employed by Aspen Surgery Center, LLC and/or Surgery Partners, Inc. in
28 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during

1 the period beginning four (4) years prior to the filing of this Complaint and ending on the date as
2 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
3 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

21 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
22 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. Code
26 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
27 having in place company policies, practices and procedures that failed to record
28 and pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for

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

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

6 (c) Committing an act of unfair competition in violation of the California Unfair
7 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
8 Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA
9 CLASS members with necessary expenses incurred in the discharge of their job
10 duties.

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

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

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

19 (c) The claims of the representative PLAINTIFFS are typical of the claims of each
20 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other
21 members of the CALIFORNIA CLASS, is classified as a non-exempt employee
22 paid on an hourly basis who has been subjected to the DEFENDANT's
23 deceptive practice and policy which failed to provide the legally required meal
24 and rest periods to the CALIFORNIA CLASS and thereby underpaid
25 compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS
26 sustained economic injury as a result of DEFENDANT's employment practices.
27 PLAINTIFFS and the members of the CALIFORNIA CLASS were and are
28 similarly or identically harmed by the same unlawful, deceptive and unfair

misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

- 1) With respect to the First Cause of Action, the final relief on behalf of the

CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seeks declaratory relief holding that the DEFENDANT's policy and practices constitute 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 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.

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

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

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

(c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

(d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able

1 to obtain effective and economic legal redress unless the action is maintained
2 as a Class Action;

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

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

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

14 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
15 business records of DEFENDANT; and,

16 (i) Class treatment provides manageable judicial treatment calculated to bring a
17 efficient and rapid conclusion to all litigation of all wage and hour related
18 claims arising out of the conduct of DEFENDANT as to the members of the
19 CALIFORNIA CLASS.

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

25
26 **THE CALIFORNIA LABOR SUB-CLASS**

27 41. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
28 Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA

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

7 21.

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

19 43. DEFENDANT maintains records from which the Court can ascertain and identify by
20 name and job title, each of DEFENDANT’s employees who have been intentionally subjected to
21 DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFFS will seek
22 leave to amend the complaint to include any additional job titles of similarly situated employees when
23 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 LABOR
27 SUB-CLASS, including, but not limited, to the following:

28 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay

1 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
2 missed meal and rest breaks in violation of the California Labor Code and
3 California regulations and the applicable California Wage Order;

4 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
6 wage statements;

7 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed
8 conduct;

9 (d) The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUB-CLASS; and,

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

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

14 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS
15 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
16 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code
17 § 1194;

18 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
19 accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR
20 SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable
21 pursuant to Cal. Lab. Code §§ 1194 and 1197;

22 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
23 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
24 statement in writing showing the corresponding correct amount of wages earned
25 by the employee; and,

26 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
27 and the other members of the CALIFORNIA LABOR SUB-CLASS with all
28 legally required off-duty, uninterrupted thirty (30) minute meal breaks and the

legally required off-duty rest breaks;

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

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, is a non-exempt employee paid on an hourly basis who has been subjected to the DEFENDANT's practice and policy which fails to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,
- (d) The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative

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

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

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

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

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

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

25 (c) Common questions of law and fact predominate as to the members of the
26 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
27 violations of California Law as listed above, and predominate over any question
28 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and

1 a Class Action is superior to other available methods for the fair and efficient
2 adjudication of the controversy, including consideration of:

- 3 1) The interests of the members of the CALIFORNIA LABOR SUB-
4 CLASS in individually controlling the prosecution or defense of
5 separate actions in that the substantial expense of individual actions will
6 be avoided to recover the relatively small amount of economic losses
7 sustained by the individual CALIFORNIA LABOR SUB-CLASS
8 Members when compared to the substantial expense and burden of
9 individual prosecution of this litigation;
- 10 2) Class certification will obviate the need for unduly duplicative litigation
11 that would create the risk of:
 - 12 A. Inconsistent or varying adjudications with respect to individual
13 members of the CALIFORNIA LABOR SUB-CLASS, which
14 would establish incompatible standards of conduct for the
15 DEFENDANT; and/or,
 - 16 B. Adjudications with respect to individual members of the
17 CALIFORNIA LABOR SUB-CLASS would as a practical
18 matter be dispositive of the interests of the other members not
19 parties to the adjudication or substantially impair or impede their
20 ability to protect their interests;
- 21 3) In the context of wage litigation because a substantial number of
22 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
23 asserting their legal rights out of fear of retaliation by DEFENDANT,
24 which may adversely affect an individual's job with DEFENDANT or
25 with a subsequent employer, the Class Action is the only means to assert
26 their claims through a representative; and,
- 27 4) A class action is superior to other available methods for the fair and
28 efficient adjudication of this litigation because class treatment will

1 obviate the need for unduly and unnecessary duplicative litigation that
2 is likely to result in the absence of certification of this action pursuant
3 to Cal. Code of Civ. Proc. § 382.

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

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

- 1 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
3 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a
4 whole;
- 5 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
6 ascertainable from the business records of DEFENDANT. The CALIFORNIA
7 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who
8 worked for DEFENDANT in California at any time during the CALIFORNIA
9 LABOR SUB-CLASS PERIOD; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to bring a
11 efficient and rapid conclusion to all litigation of all wage and hour related
12 claims arising out of the conduct of DEFENDANT as to the members of the
13 CALIFORNIA LABOR SUB-CLASS.

14
15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

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

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

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

21 51. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §
22 17021.

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

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

1 use or employment by any person of any practice which constitutes unfair competition,
2 as defined in this chapter, or as may be necessary to restore to any person in interest any
3 money or property, real or personal, which may have been acquired by means of such
4 unfair competition.

Cal. Bus. & Prof. Code § 17203.

5 53. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in
6 a business practice which violates California law, including but not limited to, the applicable Industrial
7 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
8 204, 210, 221, 226.7, 246, 248.5, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor
9 Standards Act and federal regulations promulgated thereunder, for which this Court should issue
10 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary
11 to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages
12 wrongfully withheld.

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

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

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

1 deceptive in that DEFENDANT's employment practices cause PLAINTIFFS and the other members
2 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

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

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

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

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

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

26 62. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and
27 do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the CALIFORNIA

1 CLASS have been deprived, by means of the above described unlawful and unfair business practices,
2 including earned but unpaid wages for all time worked.

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

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

14 **SECOND CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

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

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

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

22 66. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring
23 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
24 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and
25 pay reporting time and minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

28 68. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the

1 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
2 minimum so fixed in unlawful.

3 69. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
4 including reporting time pay and minimum wage compensation and interest thereon, together with the
5 costs of suit.

6 70. DEFENDANT maintains a wage practice of paying PLAINTIFFS and the other
7 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time
8 they work. As set forth herein, DEFENDANT's policy and practice is to unlawfully and intentionally
9 deny timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA
10 LABOR SUB-CLASS.

11 71. DEFENDANT's pattern of unlawful wage and hour practices manifested, without
12 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
13 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the other
14 members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

15 72. In committing these violations of the California Labor Code, DEFENDANT
16 inaccurately calculates the correct time worked and consequently underpays the actual time worked
17 by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT
18 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
19 the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
20 and regulations.

21 73. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
22 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
23 correct reporting time pay and minimum wage compensation for their time worked for DEFENDANT.

24 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked that they are
26 entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to accurately pay the
27 PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS the wages for the time they
28 work in accordance with 1197 & 1197.1, even though the PLAINTIFFS and the other members of the

1 CALIFORNIA LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in
2 fact work, off the clock time as to which DEFENDANT fails to accurately record and pay as evidenced
3 by DEFENDANT's business records and witnessed by employees.

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

9 ///

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

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

24 78. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
25 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
26 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
27 Labor Code and/or other applicable statutes. DEFENDANT's conduct as alleged herein was willful,
28 intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-

1 CLASS Members are entitled to seek and recover statutory costs.

2
3 **THIRD CAUSE OF ACTION**

4 **For Failure To Pay Overtime Compensation**

5 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

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

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

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

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

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

15 88. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
16 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not receiving
17 full compensation for overtime worked.

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

26 90. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS are paid less for overtime worked that they are
28 entitled to, constituting a failure to pay all earned wages.

1 91. DEFENDANT fails to accurately pay the PLAINTIFFS and the other members of the
2 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess
3 of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
4 though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are required
5 to work, and did in fact work, overtime as to which DEFENDANT fails to accurately record and pay
6 as evidenced by DEFENDANT's business records and witnessed by employees.

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

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

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

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

1 California Labor Code and/or other applicable statutes. DEFENDANT's conduct as alleged herein was
2 willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR
3 SUB-CLASS Members are entitled to seek and recover statutory costs.

4
5 **FOURTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

27 98. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC
28 Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS

Members who are not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

1 period was not provided.

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

5
6 **SIXTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 226]**

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

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

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

- 15 (1) gross wages earned,
16 (2) total hours worked by the employee, except for any employee whose compensation is solely
17 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
18 515 or any applicable order of the Industrial Welfare Commission,
19 (3) the number of piecerate units earned and any applicable piece rate if the employee is paid
20 on a piece-rate basis,
21 (4) all deductions, provided that all deductions made on written orders of the employee may be
22 aggregated and shown as one item,
23 (5) net wages earned,
24 (6) the inclusive dates of the period for which the employee is paid,
25 (7) the name of the employee and his or her social security number, except that by January 1,
26 2008, only the last four digits of his or her social security number or an employee identification
27 number other than a social security number may be shown on the itemized statement,
28 (8) the name and address of the legal entity that is the employer, and

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

3 106. DEFENDANT also fails to provide PLAINTIFFS and the other members of the
4 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to
5 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
6 every employer shall furnish each of his or her employees with an accurate itemized wage statement
7 in writing showing, among other things, gross wages earned and all applicable hourly rates in effect
8 during the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
9 the violations listed above, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement
10 that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
11 time to time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
12 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

24
25 **SEVENTH CAUSE OF ACTION**

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

27 **[Cal. Lab. Code § 2802]**

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

1 108. PLAINTIFFS 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.

4 109. 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.

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

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

1 **EIGHTH CAUSE OF ACTION**

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

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

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

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

9 113. Cal. Lab. Code § 200 provides, in relevant part, that:

10 As used in this article:

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

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

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

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

17 If an employee not having a written contract for a definite period quits his or her
18 employment, his or her wages shall become due and payable not later than 72
19 hours thereafter, unless the employee has given 72 hours previous notice of his
20 or her intention to quit, in which case the employee is entitled to his or her
21 wages at the time of quitting. Notwithstanding any other provision of law, an
22 employee who quits without providing a 72-hour notice shall be entitled to
23 receive payment by mail if he or she so requests and designates a mailing
24 address. The date of the mailing shall constitute the date of payment for
25 purposes of the requirement to provide payment within 72 hours of the notice of
26 quitting.

27 116. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-
28 CLASS Members' employment contract.

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

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

118. The employment of Plaintiff Hudson and Plaintiff Murdock and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

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

NINTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, et seq.]

(By Plaintiff Noel Hudson and Against All Defendants)

120. PLAINTIFFS incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

122. Plaintiff Noel Hudson, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to herself and

1 all individuals who are or previously were employed by DEFENDANT in California and classified as
2 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of June 17, 2020 until
3 a date as determined by the Court (the "PAGA PERIOD").

4 123. On June 17, 2021, Plaintiff Noel Hudson gave written notice by electronic mail to the
5 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of
6 the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
7 The statutory waiting period for Plaintiff Noel Hudson to add these allegations to the Complaint has
8 expired. As a result, pursuant to Section 2699.3, Plaintiff Noel Hudson may now commence a
9 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California
10 with respect to all AGGRIEVED EMPLOYEES as herein defined.

11 124. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because DEFENDANT (a) failed to provide Plaintiff Noel Hudson and the
13 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
14 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay
15 overtime and sick pay wages, (e) failed to reimburse employees for required expenses, and (f) failed
16 to provide wages when due, all in violation of the applicable Labor Code sections listed in Labor Code
17 §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 351, 510, 512, 558(a)(1)(2), 1194,
18 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision
19 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of
20 such conduct.¹ PLAINTIFFS hereby seeks recovery of only civil penalties as prescribed by the Labor
21 Code Private Attorney General Act of 2004 as the representative of the State of California for the
22 illegal conduct perpetrated on Plaintiff Noel Hudson and the other AGGRIEVED EMPLOYEES.

23 125. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
24 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFFS during
25 the PAGA PERIOD, Plaintiff Noel Hudson seeks penalties for those violations that affected other
26

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

1 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018).

2
3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

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

- 18 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
19 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
20 pursuant to Cal. Code of Civ. Proc. § 382;
- 21 B) Compensatory damages, according to proof at trial, including compensatory damages
22 for minimum and overtime compensation due PLAINTIFFS and the other members of
23 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
24 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 25 C) Meal and rest period compensation pursuant to California Labor Code Section 226.7
26 and the applicable IWC Wage Order;
- 27 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 28 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

1 which a violation occurs and one hundred dollars (\$100) per each member of the
2 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not
3 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs
4 for violation of Cal. Lab. Code § 226;

5 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
6 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs
7 of suit; and,

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

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

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

14 4. On all claims:

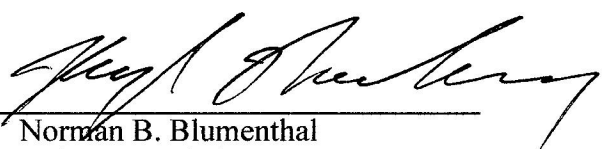
15 A) An award of interest, including prejudgment interest at the legal rate;

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

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

19
20 Dated: March 30, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

21
22
23 By: 

24 Norman B. Blumenthal
25 Kyle R. Nordrehaug
26 Attorneys for PLAINTIFFS
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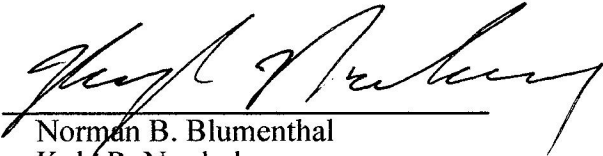
DEMAND FOR A JURY TRIAL

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

Dated: March 30, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By:



Norman B. Blumenthal

Kyle R. Nordrehaug

Attorneys for PLAINTIFFS