

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

ROXANNE POND, an individual, on behalf
of herself and on behalf of all persons
similarly situated, and on behalf of the State
of California as a private attorney general.

Plaintiff,

vs.

GLEN IVY HOT SPRINGS, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Lead Case No. CVRI2104986

[*Related Case*: CVRI2105059]

**FIRST AMENDED CLASS AND
REPRESENTATIVE 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.
9. VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff Roxanne Pond (“PLAINTIFF”), an individual, on behalf of herself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 her own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Glen Ivy Hot Springs (“DEFENDANT”) is a California corporation
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California.

9 2. DEFENDANT provides spa treatments, 17 pools, healthy cuisine and activities
10 where you can connect, escape and rejuvenate.

11 3. PLAINTIFF was employed by DEFENDANT in California from April of 2017
12 to September of 2021 and was at all times classified by DEFENDANT as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period November 1, 2017 to the earlier of the date of an order approving Plaintiff’s motion for
19 preliminary approval or January 1, 2023 (the “CALIFORNIA CLASS PERIOD”). The amount
20 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
21 dollars (\$5,000,000.00).

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

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

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

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

22 23 **THE CONDUCT**

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
28 and CALIFORNIA CLASS Members to work without paying them for all the time they were

1 under DEFENDANT's control. Among other things, DEFENDANT required PLAINTIFF to
2 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
3 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
4 should have been PLAINTIFF's off-duty meal break. PLAINTIFF and CALIFORNIA CLASS
5 Members also worked off the clock with respect to time spent undergoing mandatory drug
6 testing or any other testing and/or examination required as a condition of employment.
7 DEFENDANT, as a matter of established company policy and procedure, administered a
8 uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
9 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the
10 course of their employment, PLAINTIFF and CALIFORNIA CLASS Members were paid less
11 than they would have been paid had they been paid for actual recorded time rather than
12 "rounded" time. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
13 minimum wage, overtime wage compensation, and off-duty meal breaks by working without
14 their time being correctly recorded and without compensation at the applicable rates.
15 DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
16 Members for all time worked, is evidenced by DEFENDANT's business records.

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

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

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

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

19 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
20 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
21 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
22 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
23 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
24 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
25 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
26 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
27 not provided with one hour wages in lieu thereof. In addition, because of DEFENDANT's
28 commission pay plan that paid commissions only during sessions for massage and other

1 therapists, DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS
2 Members for their rest periods as required by the applicable Wage Order and Labor Code.
3 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
4 PLAINTIFF and the other CALIFORNIA CLASS Members. As a result, DEFENDANT's
5 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally
6 required paid rest periods is evidenced by DEFENDANT's business records. Additionally, the
7 applicable California Wage Order requires employers to provide employees with off-duty rest
8 periods, which the California Supreme Court defined as time during which an employee is
9 relieved from all work related duties and free from employer control. In so doing, the Court
10 held that the requirement under California law that employers authorize and permit all
11 employees to take rest period means that employers must relieve employees of all duties and
12 relinquish control over how employees spend their time which includes control over the
13 locations where employees may take their rest period. Employers cannot impose controls that
14 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
15 DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
16 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFF
17 and other CALIFORNIA CLASS Members cannot leave the work premises during their rest
18 period.

19 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
20 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
21 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
22 DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members
23 for all time worked, meaning the time during which an employee was subject to the control of
24 an employer, including all the time the employee was permitted or suffered to permit this work.
25 DEFENDANT required these employees to work off the clock without paying them for all the
26 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
27 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
28 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS

1 Members forfeited time worked by working without their time being accurately recorded and
2 without compensation at the applicable minimum wage and overtime wage rates. To the extent
3 that the time worked off the clock does not qualify for overtime premium payment,
4 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
5 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

6 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
7 other members of the CALIFORNIA CLASS with complete and accurate wage statements
8 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
9 Code § 226 provides that every employer shall furnish each of his or her employees with an
10 accurate itemized wage statement in writing showing, among other things, gross wages earned
11 and all applicable hourly rates in effect during the pay period and the corresponding amount of
12 time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS Members were from
13 time to time paid on an hourly basis. As such, the wage statements should reflect all applicable
14 hourly rates during the pay period and the total hours worked, and the applicable pay period in
15 which the wages were earned pursuant to California Labor Code Section 226(a)(2). The wage
16 statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS Members
17 failed to identify such information. More specifically, the wage statements failed to identify the
18 accurate total hours worked each pay period. When the hours shown on the wage statements
19 were added up, they did not equal the actual total hours worked during the pay period.
20 Additionally, DEFENDANT violated Section 226(a)(9) by failing to identify the correct rates
21 of pay and number of hours worked, including for the “Fixed Fees” item of pay, which is a
22 wage payment. Further, DEFENDANT violated Cal. Lab. Code Section 226(a)(8) by failing
23 to list the correct legal entity that is the employer of PLAINTIFF. Aside, from the violations
24 listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage
25 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
26 DEFENDANT from time to time provides PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

28 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be

1 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
2 wages are paid not more than seven calendar days following the close of the payroll period.

3 Cal. Lab. Code § 210 provides:

4 [I]n addition to, and entirely independent and apart from, any other penalty provided in
5 this article, every person who fails to pay the wages of each employee as provided in
6 Sections. . . .204. . . shall be subject to a civil penalty as follows: (1) For any initial
7 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
8 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
9 for each failure to pay each employee, plus 25 percent of the amount unlawfully
10 withheld.

11 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
12 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
13 period in accordance with Cal. Lab. Code § 204(d).

14 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
15 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
16 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
17 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
18 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
19 to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

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

24 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
25 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
26 discretionary incentive wages including but not limited to, incentives, shift differential pay, and
27 bonuses, which increased their regular rate of pay. However, when sick pay was paid, it was
28 paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA CLASS, as
opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting

1 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
2 believes and based thereon alleges that such failure to pay sick pay at regular rate was willful,
3 such that PLAINTIFF and members of the CALIFORNIA CLASS whose employment has
4 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

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

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

25 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
26 Members as a business expense, are required by DEFENDANT to use their own personal
27 cellular phones as a result of and in furtherance of their job duties as employees for
28 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated

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

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

18 19 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period November 1, 2017 to the earlier of the date of an order approving Plaintiff's motion for preliminary approval or January 1, 2023 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

30. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as

1 causation, damages, and reliance are not elements of this claim.

2 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
3 CLASS Members is impracticable.

4 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
5 law by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 CALIFORNIA CLASS would as a practical matter be
9 dispositive of the interests of the other members not parties
10 to the adjudication or substantially impair or impede their
11 ability to protect their interests;
- 12 3) In the context of wage litigation because a substantial number of
13 individual CALIFORNIA CLASS Members will avoid asserting
14 their legal rights out of fear of retaliation by DEFENDANT, which
15 may adversely affect an individual's job with DEFENDANT or
16 with a subsequent employer, the Class Action is the only means to
17 assert their claims through a representative; and,
- 18 4) A class action is superior to other available methods for the fair
19 and efficient adjudication of this litigation because class treatment
20 will obviate the need for unduly and unnecessary duplicative
21 litigation that is likely to result in the absence of certification of
22 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- 1 (b) A Class Action is superior to any other available method for the fair and
2 efficient adjudication of the claims of the members of the CALIFORNIA
3 CLASS because in the context of employment litigation a substantial
4 number of individual CALIFORNIA CLASS Members will avoid
5 asserting their rights individually out of fear of retaliation or adverse
6 impact on their employment;
- 7 (c) The members of the CALIFORNIA CLASS are so numerous that it is
8 impractical to bring all members of the CALIFORNIA CLASS before the
9 Court;
- 10 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
11 able to obtain effective and economic legal redress unless the action is
12 maintained as a Class Action;
- 13 (e) There is a community of interest in obtaining appropriate legal and
14 equitable relief for the acts of unfair competition, statutory violations and
15 other improprieties, and in obtaining adequate compensation for the
16 damages and injuries which DEFENDANT's actions have inflicted upon
17 the CALIFORNIA CLASS;
- 18 (f) There is a community of interest in ensuring that the combined assets of
19 DEFENDANT are sufficient to adequately compensate the members of
20 the CALIFORNIA CLASS for the injuries sustained;
- 21 (g) DEFENDANT has acted or refused to act on grounds generally applicable
22 to the CALIFORNIA CLASS, thereby making final class-wide relief
23 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 24 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
25 the business records of DEFENDANT; and,
- 26 (i) Class treatment provides manageable judicial treatment calculated to bring
27 a efficient and rapid conclusion to all litigation of all wage and hour
28 related claims arising out of the conduct of DEFENDANT as to the

1 members of the CALIFORNIA CLASS.

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

7
8 **THE CALIFORNIA LABOR SUB-CLASS**

9 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
10 Eighth causes Action on behalf of a California sub-class, defined as all members of the
11 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
12 and classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
13 time during the period November 1, 2018 to the earlier of the date of an order approving
14 Plaintiff's motion for preliminary approval or January 1, 2023 (the "CALIFORNIA LABOR
15 SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
16 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
17 dollars (\$5,000,000.00).

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

1 accordingly.

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

7 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
8 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

24 42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
25 under California law by:

- 26 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
28 CLASS all wages due for overtime worked, for which DEFENDANT is

1 liable pursuant to Cal. Lab. Code § 1194;

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

6 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
7 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
8 itemized statement in writing showing the corresponding correct amount
9 of wages earned by the employee;

10 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
12 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
13 meal breaks and the legally required off-duty rest breaks;

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

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

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

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

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

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

- 26 (a) Without class certification and determination of declaratory, injunctive,
27 statutory and other legal questions within the class format, prosecution of
28 separate actions by individual members of the CALIFORNIA LABOR

SUB-CLASS will create the risk of:

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

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

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

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

1 economic losses sustained by the individual CALIFORNIA
2 LABOR SUB-CLASS Members when compared to the substantial
3 expense and burden of individual prosecution of this litigation;

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

6 A. Inconsistent or varying adjudications with respect to
7 individual members of the CALIFORNIA LABOR SUB-
8 CLASS, which would establish incompatible standards of
9 conduct for the DEFENDANT; and/or,

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

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

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

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

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

ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

49. By the conduct alleged herein, DEFENDANT has engaged and continues to

1 engage in a business practice which violates California law, including but not limited to, the
2 applicable Industrial Wage Order(s), the California Code of Regulations and the California
3 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,
4 2802, and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
5 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
6 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
7 unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

10 55. PLAINTIFF further demands on behalf of herself and each member of the
11 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
12 duty paid rest period was not timely provided as required by law.

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

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

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

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

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

12
13 **SECOND CAUSE OF ACTION**

14 **For Failure To Pay Minimum Wages**

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

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

17 **and Against All Defendants)**

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

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

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

28 64. 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
2 the minimum so fixed in unlawful.

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

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

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

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

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

23 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
24 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
25 Members to work without paying them for all the time they were under DEFENDANT's
26 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
28 were entitled to, constituting a failure to pay all earned wages.

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

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

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

21 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
22 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
23 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
24 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
26 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
27 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
28 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these

1 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
2 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
3 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

4
5 **THIRD CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

7 **[Cal. Lab. Code § 510]**

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

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

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

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

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

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

1 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
3 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
4 including overtime work.

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

13 82. In committing these violations of the California Labor Code, DEFENDANT
14 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
15 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
16 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
17 of the California Labor Code, the Industrial Welfare Commission requirements and other
18 applicable laws and regulations.

19 83. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
20 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
21 receive full compensation for overtime worked.

22 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
23 from the overtime requirements of the law. None of these exemptions are applicable to the
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
26 subject to a valid collective bargaining agreement that would preclude the causes of action
27 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself
28 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-

1 negotiable, non-waiveable rights provided by the State of California.

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

5 86. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
6 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
7 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
8 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
9 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
10 failed to accurately record and pay as evidenced by DEFENDANT's business records and
11 witnessed by employees.

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

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

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

90. 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.

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)

91. 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.

92. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their

1 duties for the legally required off-duty meal periods. As a result of their rigorous work
2 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
3 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
4 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
6 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
7 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
8 in some workdays in which these employees were required by DEFENDANT to work ten (10)
9 hours of work from time to time. As a result, PLAINTIFF and other members of the
10 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
11 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

21
22 **FIFTH CAUSE OF ACTION**

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

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

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

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

1 of this Complaint.

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

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

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

22 **SIXTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 226]**

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

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

1 paragraphs of this Complaint.

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

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

22 101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
24 wage statements which failed to show, among other things, the correct gross and net wages
25 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
26 employees with an accurate itemized wage statement in writing showing, among other
27 things, gross wages earned and all applicable hourly rates in effect during the pay period and
28 the corresponding amount of time worked at each hourly rate. PLAINTIFF and
CALIFORNIA LABOR SUB-CLASS Members were from time to time 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)(2). The wage statements
DEFENDANT provided to PLAINTIFF and other CALIFORNIA LABOR SUBCLASS
Members failed to identify such information. More specifically, the wage statements failed
to identify the accurate total hours worked each pay period. When the hours shown on the
wage statements were added up, they did not equal the actual total hours worked during the

1 pay period. Additionally, DEFENDANT violated Section 226(a)(9) by failing to identify
2 the correct rates of pay and number of hours worked, including for the “Fixed Fees” item of
3 pay, which is a wage payment. Further, DEFENDANT violated Cal. Lab. Code Section
4 226(a)(8) by failing to list the correct legal entity that is the employer of PLAINTIFF. Aside,
5 from the violations listed above in this paragraph, DEFENDANT fails to issue to
6 PLAINTIFF an itemized wage statement that lists all the requirements under California
7 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provides PLAINTIFF
8 and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements
9 which violated Cal. Lab. Code § 226.

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

22 **SEVENTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 2802]**

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

27 103. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
28

1 reallege and incorporate by this reference, as though fully set forth herein, the prior
2 paragraphs of this Complaint.

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

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

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

25 106. PLAINTIFF therefore demands reimbursement for expenditures or losses
26 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
27 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
28

1 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

2 ///

3 ///

4 ///

5 ///

6 ///

7 ///

8 **EIGHTH CAUSE OF ACTION**

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

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

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

12 **and Against All Defendants)**

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

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

18 As used in this article:

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

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

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

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

108 If an employee not having a written contract for a definite period quits his
109 or her employment, his or her wages shall become due and payable not
110 later than 72 hours thereafter, unless the employee has given 72 hours
111 previous notice of his or her intention to quit, in which case the employee
112 is entitled to his or her wages at the time of quitting. Notwithstanding any
113 other provision of law, an employee who quits without providing a 72-

1 hour notice shall be entitled to receive payment by mail if he or she so
2 requests and designates a mailing address. The date of the mailing shall
3 constitute the date of payment for purposes of the requirement to provide
4 payment within 72 hours of the notice of quitting.

5 111. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
6 SUB-CLASS Members' employment contract.

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

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

14 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
15 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
16 owed as required by law.

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

24 **NINTH CAUSE OF ACTION**

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

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

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

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

116. 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

1 PAGA is fundamentally a law enforcement action designed to protect the public and not to
2 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
3 but to create a means of "deputizing" citizens as private attorneys general to enforce the
4 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
5 public interest to allow aggrieved employees, acting as private attorneys general to recover
6 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
7 claims cannot be subject to arbitration.

8 117. PLAINTIFF, and such persons that may be added from time to time who
9 satisfy the requirements and exhaust the administrative procedures under the Private
10 Attorney General Act, brings this Representative Action on behalf of the State of California
11 with respect to himself and all hourly, non-exempt employees who were employed in
12 California ("AGGRIEVED EMPLOYEES") during the time period from July 9, 2020
13 through January 1, 2023 (the "PAGA PERIOD").

14 118. On July 9, 2021, PLAINTIFF gave written notice by electronic mail to the
15 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
16 employer of the specific provisions of this code alleged to have been violated as required by
17 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
18 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
19 now commence a representative civil action under PAGA pursuant to Section 2699 as the
20 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
21 defined.

22 119. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
24 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
25 properly record and provide legally required meal and rest periods, (c) failed to pay
26 minimum wages, (d) failed to pay overtime and sick pay wages, (e) failed to reimburse
27 employees for required expenses, (f) failed to provide wages when due, and (g) failed to
28 provide seating, all in violation of the applicable Labor Code sections listed in Labor Code

§§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), 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 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 other AGGRIEVED EMPLOYEES.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

1 for restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

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

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

4. On all claims:

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

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

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

Dated: January 10, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

Dated: January 10, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff