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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Isaiah Irizarry, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JACQUELYN CRANTON and
KATRENA ARNOLD, individuals, on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiff,

vs.

GROSSMONT HOSPITAL
CORPORATION, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00001574-CU-OE-CTL

Consolidated with Case No.

37-2022-00024671-CU-OE-CTL

**FIRST AMENDED CONSOLIDATED 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;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *et seq.*; and
10. CIVIL PENALTIES PURSUANT TO LABOR CODES § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B), AND THE APPLICABLE WAGE ORDER(S).

DEMAND FOR A JURY TRIAL

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7 Attorneys for Plaintiff.

1 Plaintiff Jacquelyn Cranton and Plaintiff Katrena Arnold (“PLAINTIFFS”), individuals, on
2 behalf of themselves and all other similarly situated current and former employees allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge, the
4 following:

5 **THE PARTIES**

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

9 2. DEFENDANT is located in La Mesa, California, United States. It is the largest health
10 care facility in East San Diego County with a service area covering 750 square miles. It is owned by
11 Grossmont Healthcare District, who has leased it to Sharp HealthCare since 1991.

12 3. Plaintiff Jacquelyn Cranton was employed by DEFENDANT in California from August
13 of 2018 through October 5, 2021 and was at all times classified by DEFENDANT as a non-exempt
14 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
15 payment of minimum and overtime wages due for all time worked. Plaintiff Katrena Arnold was
16 employed by DEFENDANT in California from November of 2022, through December 2022, and was
17 at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled
18 to the legally required meal and rest periods and payment of minimum and overtime wages due for all
19 time worked.

20 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
21 defined as all non-exempt employees who are or previously were employed by DEFENDANT
22 Grossmont Hospital Corporation, (the “CALIFORNIA CLASS”) at any time during the period
23 beginning on January 13, 2018 to the earlier of preliminary approval or March 20, 2024 (the
24 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
25 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

26 5. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
28 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to

lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and CALIFORNIA

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

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

25 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members'
26 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS and
27 other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT.
28 The non-discretionary incentive program provided all employees paid on an hourly basis with incentive

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

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

22 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA
23 CLASS Members are also required from time to time to work in excess of four (4) hours without being
24 provided ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
25 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a
26 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
27 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes
28 for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other

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

18 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately record
19 and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of time these
20 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
21 required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, meaning
22 the time during which an employee was subject to the control of an employer, including all the time the
23 employee was permitted or suffered to permit this work. DEFENDANT requires these employees to
24 work off the clock without paying them for all the time they are under DEFENDANT's control. As
25 such, DEFENDANT knew or should have known that PLAINTIFFS and the other members of the
26 CALIFORNIA CLASS are under compensated for all time worked. As a result, PLAINTIFFS and other
27 CALIFORNIA CLASS Members forfeit time worked by working without their time being accurately
28 recorded and without compensation at the applicable minimum wage and overtime wage rates. To the

1 extent that the time worked off the clock does not qualify for overtime premium payment,
2 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab.
3 Code §§ 1194, 1197, and 1197.1.

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

14 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
15 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
16 not more than seven calendar days following the close of the payroll period. Cal. Lab. Code § 210
17 provides:

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

21 16. DEFENDANT from time to time fails to pay PLAINTIFFS and members of the
22 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period
23 in accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro Pay Flat” wage
24 payment.

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

1 to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

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

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

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

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

25 22. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
26 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses incurred
27 by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging
28 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are

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

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

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

26 25. Furthermore, specifically as to Plaintiff Jacquelyn Cranton, she made numerous
27 complaints in March and April of 2021 to Jennifer Peters (Manager) regarding Defendant's failure to
28 follow the California Labor Code regarding providing rest breaks, Defendant's failure to provide a safe

1 working environment during the Covid-19 pandemic, and patient safety issues which resulted in patient
2 deaths. Continuing through her employment until present, Plaintiff, Jacquelyn Cranton informed
3 DEFENDANT about such illegal wage and workplace safety practices amongst other wage related
4 concerns, but to no avail. In March and April of 2021, Plaintiff Jacqueline Cranton engaged in
5 protected activity by complaining to DEFENDANT of what Plaintiff Jacqueline Cranton reasonably
6 perceived to be illegal practices of DEFENDANT. As a direct consequence of Plaintiff Jacquelyn
7 Cranton's complaints to DEFENDANT, DEFENDANT retaliated against Plaintiff Jacquelyn Cranton
8 by demoting her from her role as Resource Nurse and denying Plaintiff Jacquelyn Cranton other job
9 opportunities and placing unreasonable demands on Plaintiff Jacquelyn Cranton's everyday work duties
10 which resulted in lost wages.

11 **JURISDICTION AND VENUE**

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

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

21 **THE CALIFORNIA CLASS**

22 28. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
24 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all non-exempt
25 employees who are or previously were employed by DEFENDANT Grossmont Hospital Corporation,
26 (the "CALIFORNIA CLASS") at any time during the period beginning on January 13, 2018 to the
27 earlier of preliminary approval or March 20, 2024 (the "CALIFORNIA CLASS PERIOD"). The amount
28

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

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

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

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

19 32. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
20 Members is impracticable.

21 33. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law
22 by:

- 23 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
24 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
25 in place company policies, practices and procedures that failed to record and pay
26 PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time
27 worked, including minimum wages owed and overtime wages owed for work
28 performed by these employees; and,

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

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

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

claims of all CALIFORNIA CLASS Members.

35. 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 seek 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

1 law as listed above, and predominate over any question affecting only individual
2 CALIFORNIA CLASS Members, and a Class Action is superior to other
3 available methods for the fair and efficient adjudication of the controversy,
4 including consideration of:

5 1) The interests of the members of the CALIFORNIA CLASS in
6 individually controlling the prosecution or defense of separate actions in
7 that the substantial expense of individual actions will be avoided to
8 recover the relatively small amount of economic losses sustained by the
9 individual CALIFORNIA CLASS Members when compared to the
10 substantial expense and burden of individual prosecution of this
11 litigation;

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

14 A. Inconsistent or varying adjudications with respect to individual
15 members of the CALIFORNIA CLASS, which would establish
16 incompatible standards of conduct for the DEFENDANT;
17 and/or,

18 B. Adjudications with respect to individual members of the
19 CALIFORNIA CLASS would as a practical matter be
20 dispositive of the interests of the other members not parties to
21 the adjudication or substantially impair or impede their ability to
22 protect their interests;

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

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

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

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

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

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

19 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able
20 to obtain effective and economic legal redress unless the action is maintained as
21 a Class Action;

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

27 (f) There is a community of interest in ensuring that the combined assets of
28 DEFENDANT are sufficient to adequately compensate the members of the

CALIFORNIA CLASS for the injuries sustained;

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

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; 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 CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

38. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes Action on behalf of a California sub-class pursuant to Cal. Code of Civ. Proc. § 382, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California and classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

39. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly

1 calculate compensation for the time worked by PLAINTIFFS and the other members of the
2 CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted
4 or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS
5 Members wages to which these employees are entitled in order to unfairly cheat the competition and
6 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
7 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
8 adjusted accordingly.

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

14 41. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 18 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
19 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
20 missed meal and rest breaks in violation of the California Labor Code and
21 California regulations and the applicable California Wage Order;
- 22 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
23 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
24 wage statements;
- 25 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed
26 conduct;
- 27 (d) The proper measure of damages and penalties owed to the members of the
28 CALIFORNIA LABOR SUB-CLASS; and,

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

2 43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
3 California law by:

4 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS and
5 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
6 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code
7 § 1194;

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

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

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

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

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

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

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

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

11 (c) The claims of the representative PLAINTIFFS are typical of the claims of each
12 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the
13 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
14 employee paid on an hourly basis who was subjected to the DEFENDANT's
15 practice and policy which failed to pay the correct amount of wages due to the
16 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury
17 as a result of DEFENDANT's employment practices. PLAINTIFFS and the
18 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
19 identically harmed by the same unlawful, deceptive, and unfair misconduct
20 engaged in by DEFENDANT; and,

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

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

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

7 1) Inconsistent or varying adjudications with respect to individual members
8 of the CALIFORNIA LABOR SUB-CLASS which would establish
9 incompatible standards of conduct for the parties opposing the
10 CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

27 1) The interests of the members of the CALIFORNIA LABOR SUB-
28 CLASS in individually controlling the prosecution or defense of separate

actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

46. This Court should permit this action to be maintained as a Class Action pursuant to Cal.

1 Code of Civ. Proc. § 382 because:

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

47. PLAINTIFFS, 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.

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

49. 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.

50. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802, and the Fair Labor Standards Act

1 and federal regulations promulgated thereunder, for which this Court should issue declaratory and other
2 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy
3 the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

19 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
20 deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other members
21 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

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

26 55. Therefore, PLAINTIFFS demands on behalf of herself and on behalf of each
27 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each

1 workday in which a second off-duty meal period was not timely provided for each ten (10) hours of
2 work.

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

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

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

17 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and
18 do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the CALIFORNIA
20 CLASS have been deprived, by means of the above described unlawful and unfair business practices,
21 including earned but unpaid wages for all time worked.

22 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further entitled
23 to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive,
24 and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful
25 and unfair business practices in the future.

26 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result

1 of the unlawful and unfair business practices described herein, PLAINTIFFS and the other members
2 of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
3 harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair
4 business practices.

5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

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

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

9 **and Against All Defendants)**

10 62. 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 63. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring
14 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
15 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and
16 pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

19 65. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
21 minimum so fixed is unlawful.

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

24 67. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they
26 work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally
27 deny timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA
28 LABOR SUB-CLASS.

1 68. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
2 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy
3 and practice that denies accurate compensation to PLAINTIFFS and the other members of the
4 CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

5 69. In committing these violations of the California Labor Code, DEFENDANT inaccurately
6 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFFS
7 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal
8 attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor
9 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

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

13 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
14 permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members to work
15 without paying them for all the time they were under DEFENDANT's control. During the
16 CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other members of the
17 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to,
18 constituting a failure to pay all earned wages.

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

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

1 LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

20
21 **THIRD CAUSE OF ACTION**

22 **For Failure To Pay Overtime Compensation**

23 **[Cal. Lab. Code § 510]**

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

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

28 77. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring

1 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
2 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for
3 all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
4 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

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

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

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

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

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

26 89. DEFENDANT knew or should have known that PLAINTIFFS and the other members
27 of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.
28 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay

1 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
2 perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA
3 LABOR SUB-CLASS for overtime worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

28 95. As a proximate result of the aforementioned violations, PLAINTIFFS and

1 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof
2 at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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4 **FIFTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

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

18 102. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
19 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
20 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
21 226 provides that every employer shall furnish each of his or her employees with an accurate itemized
22 wage statement in writing showing, among other things, gross wages earned and all applicable hourly
23 rates in effect during the pay period and the corresponding amount of time worked at each hourly rate.
24 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS
25 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As
26 a result, DEFENDANT from time to time provided PLAINTIFFS and the other members of the
27 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.
28

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

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

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

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

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

106. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other

1 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal
2 cellular phones in order to perform work related job tasks. DEFENDANT's policy and practice was
3 to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses
4 resulting from using their personal cellular phones for DEFENDANT within the course and scope of
5 their employment for DEFENDANT. These expenses were necessary to complete their principal job
6 duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.
7 Although these expenses were necessary expenses incurred by PLAINTIFFS and the CALIFORNIA
8 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and
9 the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
10 do under the laws and regulations of California.

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

15 **EIGHTH CAUSE OF ACTION**

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

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

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

19 **and Against All Defendants)**

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

23 109. Cal. Lab. Code § 200 provides, in relevant part, that:

24 As used in this article:

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

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

28 110. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an

1 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

2 111. Cal. Lab. Code § 202 provides, in relevant part, that:

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

8 112. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
9 CLASS Members’ employment contract.

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

11 If an employer willfully fails to pay, without abatement or reduction, in accordance
12 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
13 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.

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

17 115. 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 and who have
19 not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not
20 paying all wages due at time of termination for all employees who terminated employment during the
21 CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages
22 due, plus interest and statutory costs as allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **Retaliation**

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

4 **(By Plaintiff Jacquelyn Cranton Against All Defendants)**

5 116. Plaintiff Jacquelyn Cranton, realleges and incorporates by reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

7 117. At all relevant times, Labor Code section 1102.5 was in effect and was binding on
8 DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee, including
9 Plaintiff Jacquelyn Cranton, for raising complaints of illegality and/or belief that the employee may
10 disclose illegality.

11 118. Plaintiff Jacquelyn Cranton made numerous complaints in March and April of 2021 to
12 Jennifer Peters (Manager) regarding Defendant's failure to follow the California Labor Code regarding
13 providing rest breaks, Defendant's failure to provide a safe working environment during the Covid-19
14 pandemic, and patient safety issues which resulted in patient deaths. Continuing through her
15 employment until present, Plaintiff Jacquelyn Cranton informed DEFENDANT about such illegal wage
16 and workplace safety practices amongst other wage related concerns, but to no avail. In March and
17 April of 2021, Plaintiff Jacquelyn Cranton engaged in protected activity by complaining to
18 DEFENDANT of what Plaintiff Jacquelyn Cranton reasonably perceived to be illegal practices of
19 DEFENDANT. As a direct consequence of Plaintiff Jacquelyn Cranton's complaints to DEFENDANT,
20 DEFENDANT retaliated against Plaintiff Jacquelyn Cranton by demoting her from her role as Resource
21 Nurse and denying PLAINTIFF other job opportunities and placing unreasonable demands on Plaintiff
22 Jacquelyn Cranton's everyday work duties which resulted in lost wages.

23 119. As a proximate result of DEFENDANT'S willful, knowing, and intentional violation(s)
24 of Labor Code section 1102.5, Plaintiff Jacquelyn Cranton has suffered and continues to suffer
25 humiliation, emotional distress, and mental and physical pain and anguish, all to Plaintiff Jacquelyn
26 Cranton's damage in a sum according to proof.

27 120. As a result of DEFENDANT's adverse employment actions against Plaintiff Jacquelyn
28 Cranton, she has suffered general and special damages in sums according to proof.

121. DEFENDANT'S misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling Plaintiff Jacquelyn Cranton to punitive damages against DEFENDANT.

TENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By Plaintiff Jacquelyn Cranton and Against All Defendants)

122. Plaintiff, Jacquelyn Cranton realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

123. 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.

124. Plaintiff Jacquelyn Cranton, 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 all non-exempt employees who are or previously were employed by Defendant in the State of California (“AGGRIEVED EMPLOYEES”) during the time period of September 23, 2020 to the earlier of preliminary approval or March 20, 2024 (the "PAGA PERIOD").

125. On September 23, 2021, Plaintiff, Jacquelyn Cranton gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory waiting period for Plaintiff Jacquelyn Cranton to add these allegations to the

1 Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff Jacquelyn Cranton, may now
2 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State
3 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 126. The policies, acts and practices heretofore described were and are an unlawful business
5 act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the AGGRIEVED
6 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
7 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
8 sick pay wages, and (e) failed to reimburse employees for required expenses, all in violation of the
9 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a),
10 226.7, 227.3, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
11 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to
12 civil penalties as a result of such conduct.¹ Plaintiff Jacquelyn Cranton hereby seeks recovery of only
13 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
14 representative of the State of California for the illegal conduct perpetrated on Plaintiff Jacquelyn
15 Cranton and the AGGRIEVED EMPLOYEES.

16 127. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
17 To the extent that any of the conduct and violations alleged herein did not affect Plaintiff Jacquelyn
18 Cranton during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected the
19 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018).

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

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

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

1 applicable IWC Wage Order;

2 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
3 and,

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

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

10 3. On behalf of Plaintiff Jacquelyn Cranton for the Ninth Cause of Action:

11 A) For all special damages which were sustained as a result of DEFENDANT's conduct,
12 including, but not limited to, back pay, front pay, lost compensation and job benefits
13 that Plaintiff Jacquelyn Cranton would have received but for the retaliatory practices of
14 DEFENDANT; and,

15 B) For all exemplary damages, according to proof, which were sustained as a result of
16 DEFENDANT's conduct.

17 4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

18 A) Recovery of civil penalties as prescribed by the Labor Code Private
19 Attorneys General Act of 2004; and,

20 B) An award of attorneys' fees and cost of suit, as allowable under the law,
21 including, but not limited to, pursuant to Labor Code §2699.

22 5. On all claims:

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

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

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

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

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

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DEMAND FOR A JURY TRIAL

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

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

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