

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

10/17/2023

Clerk of the Court

BY: KALENE APOLONIO

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JOHN WHEELER, an individual, on behalf of
himself and on behalf of all persons similarly situated,

Plaintiff,

vs.

NEXSTAR BROADCASTING, INC., a Corporation;
NEXSTAR BROADCASTING GROUP, INC., a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-22-600499

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

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
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; and,
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. FAILURE TO PAY SICK WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246;
10. WRONGFUL TERMINATION, RETALIATION AND HARASSMENT IN VIOLATION OF FEHA; and
11. CIVIL PENALTIES PURSUANT TO LABOR CODE § 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

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

5
6 **THE PARTIES**

7 1. Defendant Nexstar Broadcasting, Inc. is a corporation that at all relevant times
8 mentioned herein conducted and continues to conduct substantial business in the state of
9 California.

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

13 3. Defendants Nexstar Broadcasting, Inc. and Nexstar Broadcasting Group, Inc.
14 were the joint employers of PLAINTIFF as evidenced by paycheck and by the company
15 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers
16 for the conduct alleged herein, and are therefore collectively referred to herein as
17 “DEFENDANT.”

18 4. DEFENDANT owns, operates, programs or provides sales and other services to
19 200 television stations

20 5. PLAINTIFF was employed by DEFENDANT in California from October of 2015
21 to October of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
22 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
23 of minimum and overtime wages due for all time worked.

24 6. PLAINTIFF brings this Class Action on behalf of himself and a California class,
25 defined as all individuals who are or previously were employed by Defendants Nexstar
26 Broadcasting, Inc., and Nexstar Broadcasting Group, Inc., (collectively “DEFENDANT”) in the
27 State of California on a non-exempt basis (the “CALIFORNIA CLASS”) from July 1, 2018 to
28 the earlier of preliminary approval or October 17, 2023 (the “CALIFORNIA CLASS

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

3 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
5 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
6 failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged
7 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
8 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
9 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
10 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
11 the other members of the CALIFORNIA CLASS who have been economically injured by
12 DEFENDANT’s past and current unlawful conduct, and all other appropriate legal and
13 equitable relief.

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

23 9. The agents, servants and/or employees of the Defendants and each of them acting
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
28 all Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

3 4 THE CONDUCT

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

1 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
2 business records.

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

7 12. The second component of PLAINTIFF's and other CALIFORNIA CLASS
8 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
9 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
10 performance for DEFENDANT. The non-discretionary incentive program provided all
11 employees paid on an hourly basis with incentive compensation when the employees met the
12 various performance goals set by DEFENDANT. However, when calculating the regular rate
13 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and other
14 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation
15 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
16 meal and rest break premium pay. Management and supervisors described the incentive
17 program to potential and new employees as part of the compensation package. As a matter of
18 law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
19 Members must be included in the "regular rate of pay." The failure to do so has resulted in a
20 underpayment of overtime compensation and meal and rest break premiums to PLAINTIFF and
21 other CALIFORNIA CLASS Members by DEFENDANT.

22 13. As a result of their rigorous work schedules, PLAINTIFF and other
23 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
24 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
25 other CALIFORNIA CLASS Members were required from time to time to perform work as
26 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
27 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
28 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in

1 which these employees were required by DEFENDANT to work ten (10) hours of work.
2 DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
3 penalties to PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF and other
4 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
5 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

26 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
27 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
28 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,

1 DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members
2 for all time worked, meaning the time during which an employee was subject to the control of
3 an employer, including all the time the employee was permitted or suffered to permit this work.
4 DEFENDANT required these employees to work off the clock without paying them for all the
5 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
6 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
7 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
8 Members forfeited time worked by working without their time being accurately recorded and
9 without compensation at the applicable minimum wage and overtime wage rates. To the extent
10 that the time worked off the clock does not qualify for overtime premium payment,
11 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
12 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

13 16. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
14 other members of the CALIFORNIA CLASS with complete and accurate wage statements
15 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
16 Code § 226 provides that every employer shall furnish each of his or her employees with an
17 accurate itemized wage statement in writing showing, among other things, gross wages earned
18 and all applicable hourly rates in effect during the pay period and the corresponding amount of
19 time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS Members were paid
20 on an hourly basis. As such, the wage statements should reflect all applicable hourly rates
21 during the pay period and the total hours worked, and the applicable pay period in which the
22 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
23 DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS Members failed to
24 identify such information. More specifically, the wage statements failed to identify the accurate
25 total hours worked each pay period. When the hours shown on the wage statements were added
26 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
27 Lab. Code 226(a)(2). Additionally, DEFENDANT violates Cal. Lab. Code Section 226(a)(8)
28 by failing to list the correct name of the legal entity that employed PLAINTIFF and other

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

6 17. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
7 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
8 wages are paid not more than seven (7) calendar days following the close of the payroll period.
9 Cal. Lab. Code § 210 provides:

10 [I]n addition to, and entirely independent and apart from, any other penalty provided in
11 this article, every person who fails to pay the wages of each employee as provided in
12 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
13 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.

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

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

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

27 21. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
28 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-

1 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
2 was paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA
3 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
4 Section 246.

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

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

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

1 directions of the employer, even though unlawful, unless the employee, at the time of obeying
2 the directions, believed them to be unlawful."

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

13 26. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
14 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
15 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
16 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
17 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
18 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
19 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for
20 the legally required off-duty meal periods. DEFENDANT also failed to pay PLAINTIFF all of
21 her earned commissions due to her when she left employment with DEFENDANT in October
22 of 2021. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required
23 meal periods is evidenced by DEFENDANT's business records. The amount in controversy
24 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

25 **JURISDICTION AND VENUE**

26 27. This Court has jurisdiction over this Action pursuant to California Code of Civil
27 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
28 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees

1 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

7
8 **THE CALIFORNIA CLASS**

9 29. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
10 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
11 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
12 all individuals who are or previously were employed by Defendants Nexstar Broadcasting, Inc.,
13 and Nexstar Broadcasting Group, Inc., (collectively "DEFENDANT") in the State of California
14 on a non-exempt basis (the "CALIFORNIA CLASS") from July 1, 2018 to the earlier of
15 preliminary approval or October 17, 2023 (the "CALIFORNIA CLASS PERIOD"). The
16 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
17 million dollars (\$5,000,000.00).

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

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

28 32. DEFENDANT has the legal burden to establish that each and every

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

9 33. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
10 CLASS Members is impracticable.

11 34. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
12 law by:

- 13 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
14 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
15 deceptively having in place company policies, practices and procedures
16 that failed to record and pay PLAINTIFF and the other members of the
17 CALIFORNIA CLASS for all time worked, including minimum wages
18 owed and overtime wages owed for work performed by these employees;
19 and,
20 (b) Committing an act of unfair competition in violation of the UCL, by
21 failing to provide the PLAINTIFF and the other members of the
22 CALIFORNIA CLASS with the legally required meal and rest periods.

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

- 25 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
26 that the joinder of all such persons is impracticable and the disposition of
27 their claims as a class will benefit the parties and the Court;
28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CALIFORNIA
2 CLASS will apply to every member of the CALIFORNIA CLASS;

3 (c) The claims of the representative PLAINTIFF are typical of the claims of
4 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
5 other members of the CALIFORNIA CLASS, was classified as a non-
6 exempt employee paid on an hourly basis who was subjected to the
7 DEFENDANT's deceptive practice and policy which failed to provide the
8 legally required meal and rest periods to the CALIFORNIA CLASS and
9 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
10 CLASS. PLAINTIFF sustained economic injury as a result of
11 DEFENDANT's employment practices. PLAINTIFF and the members of
12 the CALIFORNIA CLASS were and are similarly or identically harmed
13 by the same unlawful, deceptive and unfair misconduct engaged in by
14 DEFENDANT; and,

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

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

25 (a) Without class certification and determination of declaratory, injunctive,
26 statutory and other legal questions within the class format, prosecution of
27 separate actions by individual members of the CALIFORNIA CLASS will
28 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 PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- (c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

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

1 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 to the CALIFORNIA CLASS, thereby making final class-wide relief
2 appropriate with respect to the CALIFORNIA CLASS as a whole;

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

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

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

14
15 **THE CALIFORNIA LABOR SUB-CLASS**

16 39. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh ,
17 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members of
18 the CALIFORNIA CLASS who are or previously were employed by Nexstar Broadcasting, Inc.
19 and/or Nexstar Broadcasting Group, Inc. in California, including employees staffed with
20 Nexstar Broadcasting, Inc. and/or Nexstar Broadcasting Group, Inc. by a third party, and
21 classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time
22 during the period three (3) years prior to the filing of the complaint and ending on the date as
23 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
24 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
25 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).
26 DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission
27 ("IWC") Wage Order requirements, and the applicable provisions of California law,
28 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and

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

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

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

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

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

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

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

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

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

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

1 question affecting only individual CALIFORNIA LABOR SUB-CLASS
2 Members, and a Class Action is superior to other available methods for
3 the fair and efficient adjudication of the controversy, including
4 consideration of:

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

1 representative; and,

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

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

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

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

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

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

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

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

27 49. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair
4 competition may be enjoined in any court of competent jurisdiction. The court
5 may make such orders or judgments, including the appointment of a receiver, as
6 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.

7 Cal. Bus. & Prof. Code § 17203.

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

16 51. By the conduct alleged herein, DEFENDANT's practices were unlawful and
17 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
18 unscrupulous or substantially injurious to employees, and were without valid justification or
19 utility for which this Court should issue equitable and injunctive relief pursuant to Section
20 17203 of the California Business & Professions Code, including restitution of wages wrongfully
21 withheld.

22 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
24 meal and rest periods, the required amount of compensation for missed meal and rest periods
25 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
26 all necessary business expenses incurred, and failed to provide Fair Labor Standards Act
27 overtime wages due for overtime worked as a result of failing to include non-discretionary
28 incentive compensation into their regular rates of pay for purposes of computing the proper

1 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.
2 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
3 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
4 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

5 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
6 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
7 other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

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

13 55. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
14 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
15 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
16 for each workday in which a second off-duty meal period was not timely provided for each ten
17 (10) hours of work.

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

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

27 58. All the acts described herein as violations of, among other things, the Industrial
28 Welfare Commission Wage Orders, the California Code of Regulations, and the California

1 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
2 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
3 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

9 60. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
10 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
11 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
12 engaging in any unlawful and unfair business practices in the future.

13 61. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
14 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
15 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
16 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
17 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
18 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
19 engage in these unlawful and unfair business practices.

20
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

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

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

1 63. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
3 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
4 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
5 Members.

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

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

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

13 67. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
15 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
16 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS.

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

22 69. In committing these violations of the California Labor Code, DEFENDANT
23 inaccurately calculated the correct time worked and consequently underpaid the actual time
24 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
25 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
26 benefits in violation of the California Labor Code, the Industrial Welfare Commission
27 requirements and other applicable laws and regulations.

28 70. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
2 receive the correct minimum wage compensation for their time worked for DEFENDANT.

3 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
4 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
5 Members to work without paying them for all the time they were under DEFENDANT's
6 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
8 were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

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

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

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

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

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

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

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

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

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

27 84. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive full compensation for overtime worked.

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

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

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

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

26 89. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
28 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,

1 to not pay employees for their labor as a matter of company policy, practice and procedure, and
2 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
3 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

1 each workday that a meal period was not provided.

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

6
7 **FIFTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

26 98. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
28 CLASS Members who were not provided a rest period, in accordance with the applicable Wage

1 Order, one additional hour of compensation at each employee's regular rate of pay for each
2 workday that rest period was not provided.

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

7 **SIXTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 226]**

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

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

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

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

102. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate

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

22 103. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
23 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
25 expended calculating the correct wages for all missed meal and rest breaks and the amount
26 of employment taxes which were not properly paid to state and federal tax authorities.
27 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
28 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 PLAINTIFF 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 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

104. PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF 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, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for

1 expenses resulting from using their personal cellular phones for DEFENDANT within the
2 course and scope of their employment for DEFENDANT. These expenses were necessary
3 to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
4 conduct to assert any waiver of this expectation. Although these expenses were necessary
5 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
6 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
7 LABOR SUB-CLASS members for these expenses as an employer is required to do under
8 the laws and regulations of California.

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

13 **EIGHTH CAUSE OF ACTION**

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

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

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

17 **and Against All Defendants)**

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

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

22 As used in this article:

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

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

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

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

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

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

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

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

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

///

///

///

///

1 **NINTH CAUSE OF ACTION**

2 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

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

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

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

21 118. As a matter of policy and practice, DEFENDANT pays sick pay wages to
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
23 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
24 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
25 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
26 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
27 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non
28 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the

1 employee's total wages, not including overtime premium pay, by the employee's total hours
2 worked in the full pay periods of the prior 90 days of employment. As a result,
3 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
4 CALIFORNIA LABOR-SUB-CLASS.

5 119. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
6 during each calendar month and are to be paid no later than the payday for the next regular
7 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
8 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
9 no later than the payday for the next regular payroll period after accrued sick leave is used as
10 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
11 employee, wages earned and unpaid at the time of discharge are due and payable
12 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
13 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
14 the employee has given 72-hour notice of his or her intention to quit, in which case the
15 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
16 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
17 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
18 wages of the employee shall continue as a penalty from the due date, and at the same rate
19 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
20 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
21 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
22 sue to recover applicable penalties

23 **TENTH CAUSE OF ACTION**

24 **[Wrongful Termination, Retaliation and Harassment Under FEHA]**

25 **For Violation of FEHA Government Section 12900, *et. seq.***

26 **(By PLAINTIFF Against All Defendants)**

27 120 PLAINTIFF realleges and incorporates by reference, as though fully set forth
28 herein, the prior paragraphs of this Complaint.

1 121. Subsequent to Plaintiff's participation in protected activity by complaining to
2 Defendant of Defendant's unlawful employment practices, Defendant subjected Plaintiff to
3 adverse employment actions by retaliating against Plaintiff. Specifically, after Plaintiff
4 complained to the human resources department about Defendant's unlawful employment
5 practices in May of 2021 and throughout the rest of his employment. Plaintiff's complaints
6 included, but were not limited to, the fact that one of his superiors had purposefully created
7 a hostile working environment by abusing, harassing, discriminating and undermining him.
8 Ultimately, Plaintiff employment was terminated in October of 2021. As a result, there is a
9 causal link between the protected activity and the termination.

10 122. Plaintiff was also subjected to unwelcome sexual discrimination which was
11 severe and/or pervasive to the extent that a reasonable homosexual male in Plaintiff's
12 circumstances would have considered the work environment to be hostile and/or abusive and
13 Plaintiff did in fact consider his work environment to be hostile or abusive. Defendant's
14 managers and/or supervisors engaged in the wrongful conduct. Beginning in May of 2021,
15 Plaintiff began alerting Defendant as to the hostile work environment that he was being
16 subjected to, one which included sexual and age discrimination from his co-workers.
17 Plaintiff continued with these complaints at various times during May of 2021. Defendant
18 refused to take Plaintiff's complaints seriously and failed to protect Plaintiff by placing him
19 in a hostile work environment in which he was subjected to numerous acts of sexual and age
20 discrimination from his co-workers. For all of these reasons stated above, including but not
21 limited to Defendant's unwillingness to remedy such disparate treatment and harassment,
22 Plaintiff's employment was terminated in October of 2021 due to his continued and unheard
23 complaints about this porous behavior.

24 123. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
25 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
26 including the following bases for liability:

27 a. Taking adverse employment actions against PLAINTIFF, including
28 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or

1 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
2 PLAINTIFF's sexual orientation, age and engaging in a protected activity in violation of
3 Government Code Section 12940(a);

4 b. Harassing PLAINTIFF and/or creating a hostile work environment, in
5 whole or in part on the basis of PLAINTIFF's sexual orientation, age and engaging in a
6 protected activity in violation of Government Code Section 12940(j)(1);

7 c. Failing to take all reasonable steps to prevent discrimination and
8 harassment based on PLAINTIFF'S sexual orientation, age and engaging in a protected
9 activity in violation of Government Code section 12940(k);

10 d. Retaliating against PLAINTIFF for seeking to exercise rights
11 guaranteed under FEHA, participating in protected activities, and/or opposing
12 DEFENDANT's failure to provide such rights, in violation of Government Code Section
13 12940(h).

14 124. As a proximate result of DEFENDANT's willful, knowing, and intentional
15 discrimination, harassment and retaliation against PLAINTIFF, PLAINTIFF has sustained
16 and continues to sustain substantial losses of earnings and other employment benefits.

17 125. As a proximate result of DEFENDANT's willful, knowing, and intentional
18 discrimination harassment and retaliation against PLAINTIFF, PLAINTIFF has suffered
19 and continues to suffer humiliation, emotional distress, and physical and mental pain and
20 anguish, all to PLAINTIFF's damage in a sum according to proof.

21 126. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
22 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
23 reasonable attorneys' fees and costs (including expert costs) in an amount according to
24 proof.

25 127. DEFENDANT's misconduct was committed intentionally, in a malicious,
26 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
27 against DEFENDANT.

28 ///

1 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

17 130. PLAINTIFF, and such persons that may be added from time to time who
18 satisfy the requirements and exhaust the administrative procedures under the Private
19 Attorney General Act, brings this Representative Action on behalf of the State of California
20 with respect to himself and all individuals who were employed by Defendants in California
21 and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") at any time
22 during the time period of July 1, to the earlier of preliminary approval or October 17, 2023
23 (the "PAGA PERIOD").

24 131. On April 8, 2022, PLAINTIFF gave written notice by electronic mail to the
25 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
28 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now

1 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
2 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 132. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
6 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
7 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
8 required expenses, and (f) failed to provide wages when due, all in violation of the
9 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
10 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
11 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s),
12 and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby
13 seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney
14 General Act of 2004 as the representative of the State of California for the illegal conduct
15 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

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

21 ///

22 ///

23 ///

24 ///

25 ///

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, 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
6 CLASS 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
10 withheld from compensation due to PLAINTIFF and the other members of the
11 CALIFORNIA CLASS; and,
12 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANT's violations due to
14 PLAINTIFF and 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, Seventh, Eighth
17 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
18 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum and overtime compensation due PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
22 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
23 statutory rate;
24 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
25 in which a violation occurs and one hundred dollars (\$100) per each member of
26 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
27 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
28 an award of costs for violation of Cal. Lab. Code § 226;

- 1 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
4 1197;
- 5 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
6 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
7 costs of suit.; and,
- 8 G) The wages of all terminated employees in the CALIFORNIA LABOR
9 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
10 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 11 3. On behalf of PLAINTIFF for the Tenth cause of action:
- 12 A) For all special damages which were sustained as a result of DEFENDANT’S
13 conduct, including, but not limited to, back pay, front pay, lost compensation and
14 job benefits that PLAINTIFF would have received but for the retaliatory practices
15 of DEFENDANT; and,
- 16 B) For all exemplary damages, according to proof, which were sustained as a result
17 of DEFENDANT’S conduct.
- 18 C) For punitive damages pursuant to Civil Code §3294.
- 19 4. On behalf of the State of California and with respect to all AGGRIEVED
20 EMPLOYEES:
- 21 A) Recovery of civil penalties as prescribed by the Labor Code Private
22 Attorneys General Act of 2004; and,
- 23 B) An award of attorneys’ fees and cost of suit, as allowable under the
24 law, including, but not limited to, pursuant to Labor Code §2699.
- 25 5. On all claims:
- 26 A) An award of interest, including prejudgment interest at the legal rate;
- 27 B) Such other and further relief as the Court deems just and equitable; and,
- 28 C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the

1 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
2 and/or §2802.

3
4 Dated: October 17, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
5

6
7 By: /s/ Nicholas J. De Blouw
8 Norman B. Blumenthal
9 Nicholas J. De Blouw
10 Attorneys for Plaintiff
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DEMAND FOR A JURY TRIAL

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

Dated: October 17, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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