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Case #23CV418864
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

RUSTIN FOX, GABRIELE SANTI, and
PATRICK BURK, individuals, on behalf of
themselves and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

CRISIS24, INC., a Corporation; CRISIS24
PROTECTIVE SOLUTIONS, LP, a Limited
Partnership; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV418864

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION AND UNFAIR, UNLAWFUL, OR FRAUDULENT BUSINESS PRACTICES IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES AND WAGES FOR ALL HOURS WORKED IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510 & 1194;
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 TIMELY ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE AND UPON DISCHARGE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246;
10. DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA;
11. FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF CAL. GOV. CODE § 12940(m);
12. FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF CAL. GOV. CODE § 12940(m); and,
13. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.
14. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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28 Attorneys for Plaintiffs

1 Rustin Fox, Gabriele Santi, and Patrick Burk (“PLAINTIFFS”), individuals, on behalf of
2 themselves and all other similarly situated current and former employees allege on information and
3 belief, except for their own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. Crisis24, Inc. is a corporation that at all relevant times mentioned herein conducted and
7 continues to conduct substantial business in California.

8 2. Crisis24 Protective Solutions, LP is a limited partnership that at all relevant times
9 mentioned herein conducted and continues to conduct substantial business in California. Crisis24, Inc.
10 and Crisis24 Protective Solutions, LP are collectively referred to as “DEFENDANT”)

11 3. DEFENDANT provides security services in California.

12 4. Plaintiff Fox was employed by DEFENDANT in California from October of 2022 to
13 January of 2023. Plaintiff Fox was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
15 minimum and overtime wages due for all time worked.

16 5. Plaintiff Santi has been employed by DEFENDANT in California from September of
17 2022 to May of 2024. Plaintiff Santi was at all times classified by DEFENDANT as a non-exempt
18 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
19 payment of minimum and overtime wages due for all time worked.

20 6. Plaintiff Burk was employed by DEFENDANT in California from January of 2022 to
21 March of 2023. Plaintiff Burk 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 of
23 minimum and overtime wages due for all time worked.

24 7. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
25 defined as all individuals who are or previously were (a) employed by DEFENDANT in California, and
26 (b) classified as non-exempt (i.e., hourly) employees (the “CALIFORNIA CLASS”) at any time during
27 the period from July 1, 2021 to June 26, 2024, or to the date of Preliminary Approval, whichever is
28 earlier (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of

1 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

2 8. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
3 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
4 CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed to
5 lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was an
6 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to
7 retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.

8 PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining
9 such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and the other
10 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's
11 past and current unlawful conduct, and all other appropriate legal and equitable relief (including but
12 not limited to penalties, interest, and other equitable relief, reasonable attorney's fees and costs
13 under Cal. Labor Code and applicable Wage Orders, Cal Civ Proc. Code Sect. 1021.5, and
14 restitution under California's Unfair Competition Law.).

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

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

1 and severally liable to PLAINTIFFS and the other members of the CALIFORNIA CLASS, for the
2 loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or
3 employees.

4 THE CONDUCT

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

1 12. State and federal law provides that employees must be paid overtime and meal and
2 rest break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFFS and other
3 CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied to
4 specific elements of an employee’s performance.

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

20 14. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA
21 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and
22 were not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA
23 CLASS Members were required from time to time to perform work as ordered by DEFENDANT
24 for more than five (5) hours during some shifts without receiving a meal break. Further,
25 DEFENDANT from time to time failed to provide PLAINTIFFS and CALIFORNIA CLASS
26 Members with a second off-duty meal period for some workdays in which these employees were
27 required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged in the
28 practice of rounding the meal period times to avoid paying penalties to PLAINTIFFS and other

1 CALIFORNIA CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS
2 therefore forfeit meal breaks without additional compensation and in accordance with
3 DEFENDANT's corporate policy and practice.

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

11 PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one hour
12 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers to
13 provide employees with off-duty rest periods, which the California Supreme Court defined as time
14 during which an employee is relieved from all work related duties and free from employer control.
15 In so doing, the Court held that the requirement under California law that employers authorize and
16 permit all employees to take rest period means that employers must relieve employees of all duties
17 and relinquish control over how employees spend their time which includes control over the
18 locations where employees may take their rest period. Employers cannot impose controls that
19 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
20 DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA CLASS Members from
21 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFFS and
22 other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

23 16. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
24 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of
25 time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
26 DEFENDANT was required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
27 all time worked, meaning the time during which an employee was subject to the control of an
28 employer, including all the time the employee was permitted or suffered to permit this work.

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

9 17. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
10 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
11 to show, among other things, the correct gross and net wages earned and the accurate name of the
12 company employment them. Cal. Lab. Code § 226 provides that every employer shall furnish each
13 of his or her employees with an accurate itemized wage statement in writing showing, among other
14 things, gross wages earned and all applicable hourly rates in effect during the pay period and the
15 corresponding amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA
16 CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all
17 applicable hourly rates during the pay period and the total hours worked, and the applicable pay
18 period in which the wages were earned pursuant to California Labor Code Section 226(a). The
19 wage statements DEFENDANT provided to PLAINTIFFS and other CALIFORNIA CLASS
20 Members failed to identify such information. More specifically, the wage statements failed to
21 identify the accurate total hours worked each pay period, and also failed to include premium and
22 meal and rest break pay. When the hours shown on the wage statements were added up, they did
23 not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code
24 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue
25 to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor
26 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
27 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.
28

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

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

11 19. DEFENDANT from time to time failed to pay PLAINTIFFS and members of the
12 CALIFORNIA CLASS Members within seven (7) days of the close of the payroll period in
13 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly” regular
14 wage payments.

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

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

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

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

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

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

26 26. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
27 Members as a business expense, were required by DEFENDANT to use their own personal cellular
28 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are

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

8 27. In violation of the applicable sections of the California Labor Code and the
9 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
10 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and
11 systematically failed to provide PLAINTIFFS and the other Aggrieved Employees suitable seating
12 when the nature of these employees' work reasonably permitted sitting.

13 28. DEFENDANT knew or should have known that PLAINTIFFS and other Aggrieved
14 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with
15 the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did
16 not allow them to sit when it did not interfere with the performance of their duties.

17 29. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved Employees,
18 DEFENDANT violated California Labor Code Section 1198 and California Code of Regulations,
19 Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order 4-2001, Section 14 by failing
20 to provide suitable seats. PLAINTIFFS seek penalties on behalf of PLAINTIFFS and other
21 Aggrieved Employees as provided herein. Providing suitable seating is the DEFENDANT's
22 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
23 DEFENDANT violated the California Labor Code and regulations promulgated thereunder as
24 herein alleged.

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

1 meal and rest breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for
2 PLAINTIFFS' missed meal and rest breaks. The nature of the work performed by the PLAINTIFFS
3 did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS' duties for the legally
4 required off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFFS with
5 the legally required meal periods is evidenced by DEFENDANT's business records.

6 **JURISDICTION AND VENUE**

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

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

16 **THE CALIFORNIA CLASS**

17 33. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
18 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
19 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
20 individuals who are or previously were (a) employed by DEFENDANT in California, and (b)
21 classified as non-exempt (i.e., hourly) employees (the "CALIFORNIA CLASS") at any time during
22 the period from July 1, 2021 to June 26, 2024, or to the date of Preliminary Approval, whichever is
23 earlier (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
24 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).
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26 34. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
27 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.
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1 35. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
5 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though DEFENDANT
6 enjoyed the benefit of this work, required employees to perform this work and permits or suffers to
7 permit this work.

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

17 37. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 38. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
20 law by:

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

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

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

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

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

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

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

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

1 and incidental equitable relief as may be necessary to prevent and
2 remedy the conduct declared to constitute unfair competition;

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

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

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

18 A. Inconsistent or varying adjudications with respect to
19 individual members of the CALIFORNIA CLASS, which
20 would establish incompatible standards of conduct for the
21 DEFENDANT; and/or,

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

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

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

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

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

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

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

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

23
24 43. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
25 and Ninth causes Action on behalf of the CALIFORNIA CLASS during the CALIFORNIA CLASS
26 PERIOD pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate
27 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).
28

1 44. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
2 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law,
3 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to
4 correctly calculate compensation for the time worked by PLAINTIFFS and the other members of
5 the CALIFORNIA CLASS and reporting time wages owed to these employees, even though
6 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
7 permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA CLASS
8 Members wages to which these employees are entitled in order to unfairly cheat the competition
9 and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
10 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
11 accordingly.

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

17 46. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 47. Common questions of law and fact exist as to members of the CALIFORNIA
20 CLASS, including, but not limited, to the following:

- 21 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
22 compensation due to members of the CALIFORNIA CLASS for missed meal
23 and rest breaks in violation of the California Labor Code and California
24 regulations and the applicable California Wage Order;
25 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
26 members of the CALIFORNIA CLASS with accurate itemized wage
27 statements;
28

- 1 (c) Whether DEFENDANT has engaged in unfair competition by the
2 above-listed conduct;
3 (d) The proper measure of damages and penalties owed to the members of the
4 CALIFORNIA CLASS; and,
5 (e) Whether DEFENDANT's conduct was willful.

6 48. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
7 law by:

- 8 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS
9 and the members of the CALIFORNIA CLASS all wages due for overtime
10 worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code §
11 1194;
12 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
13 accurately pay PLAINTIFFS and the members of the CALIFORNIA CLASS
14 the correct minimum wage pay for which DEFENDANT is liable pursuant to
15 Cal. Lab. Code §§ 1194 and 1197;
16 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
17 members of the CALIFORNIA CLASS with an accurate itemized statement
18 in writing showing the corresponding correct amount of wages earned by the
19 employee;
20 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
21 PLAINTIFFS and the other members of the CALIFORNIA CLASS with all
22 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
23 the legally required off-duty rest breaks;
24 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
25 an employee is discharged or quits from employment, the employer must pay
26 the employee all wages due without abatement, by failing to tender full
27 payment and/or restitution of wages owed or in the manner required by
28

1 California law to the members of the CALIFORNIA CLASS who have
2 terminated their employment; and,

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

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

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

1 certification inappropriate. Counsel for the CALIFORNIA CLASS will
2 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

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

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

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

12
13 **FIRST CAUSE OF ACTION**

14 **For Unfair and Unlawful Business Practices**

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

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

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

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

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition
27 may be enjoined in any court of competent jurisdiction. The court may make such
28 orders or judgments, including the appointment of a receiver, as may be necessary to
prevent the use or employment by any person of any practice which constitutes
unfair competition, as defined in this chapter, or as may be necessary to restore to

1 any person in interest any money or property, real or personal, which may have been
2 acquired by means of such unfair competition.

3 Cal. Bus. & Prof. Code § 17203.

4 55. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
5 in a business practice which violates California law, including but not limited to, the applicable
6 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
7 including Sections 204, 210, 221, 226.7, 246, 246.5, 510, 512, 1174, 1194.2, 1197, 1197.1, 1198,
8 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for which
9 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
10 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
11 including restitution of wages wrongfully withheld.

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

17 57. By the conduct alleged herein, DEFENDANT's practices were deceptive and
18 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated meal
19 and rest periods, the required amount of compensation for missed meal and rest periods and
20 overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse all
21 necessary business expenses incurred, and failed to provide Fair Labor Standards Act overtime
22 wages due for overtime worked as a result of failing to include non-discretionary incentive
23 compensation into their regular rates of pay for purposes of computing the proper overtime pay due
24 to a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
25 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and
26 for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
27 § 17203, including restitution of wages wrongfully withheld.
28

1 58. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
2 and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other
3 members of the CALIFORNIA CLASS to be underpaid during their employment with
4 DEFENDANT.

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

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

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

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

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

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

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

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

17
18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Minimum Wages and Wages for All Hours Worked**

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

21 **(By PLAINTIFFS and the CALIFORNIA CLASS**

22 **and Against All Defendants)**

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

26 68. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim for
27 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
28

1 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
2 minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

5 70. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
7 minimum so fixed is unlawful.

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

10 72. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
11 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. As
12 set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny
13 timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA
14 CLASS.

15 73. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
16 applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a policy and
17 practice that denies accurate compensation to PLAINTIFFS and the other members of the
18 CALIFORNIA CLASS in regards to minimum wage pay.

19 74. In committing these violations of the California Labor Code, DEFENDANT
20 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
21 by PLAINTIFFS and other members of the CALIFORNIA CLASS. DEFENDANT acted in an
22 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
23 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
24 and regulations.

25 75. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
26 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
27 minimum wage compensation for their time worked for DEFENDANT.
28

1 76. During the CALIFORNIA CLASS PERIOD, DEFENDANT required, permitted or
2 suffered PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all
3 the time they were under DEFENDANT's control. During the CALIFORNIA CLASS PERIOD,
4 PLAINTIFFS and the other members of the CALIFORNIA CLASS were paid less for time worked
5 that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

25 80. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
26 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
27 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
28 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is

1 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
2 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore
3 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
4 penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's
5 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and
6 other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

7
8 **THIRD CAUSE OF ACTION**

9 **For Failure To Pay Overtime Compensation**

10 **[Cal. Lab. Code §§ 510 and 558]**

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

12 81. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
13 incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

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

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

22 84. Cal. Lab. Code §§ 510, 558 and applicable Wage Orders further provide be
23 employed more than eight (8) hours per workday, more than forty (40) hours per workweek, or on
24 the seventh day worked in a single workweek unless they receive additional compensation beyond
25 their regular wages in amounts specified by law.

26 85. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage and overtime compensation and interest thereon, together with the costs
28

1 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
2 than those fixed by the Industrial Welfare Commission is unlawful.

3 86. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and
4 CALIFORNIA CLASS Members were required, permitted or suffered by DEFENDANT to work
5 for DEFENDANT and were not paid for all the time they worked, including overtime work.

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

13 88. In committing these violations of the California Labor Code, DEFENDANT
14 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
15 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
16 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
17 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
18 regulations. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
19 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
20 compensation for overtime worked.

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

1 90. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and the other members
2 of the CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
3 constituting a failure to pay all earned wages.

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

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

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

21 94. In performing the acts and practices herein alleged in violation of California labor
22 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
23 worked and provide them with the requisite overtime compensation, DEFENDANT acted and
24 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights,
26 or the consequences to them, and with the despicable intent of depriving them of their property and
27 legal rights, and otherwise causing them injury in order to increase company profits at the expense
28 of these employees. 1. PLAINTIFFS and the other members of the CALIFORNIA CLASS

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

11
12 **FOURTH CAUSE OF ACTION**

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

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

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

16 95. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
17 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
18 Complaint.

19 96. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and the CALIFORNIA
20 LABOR SUB-CLASS were not afforded legally compliant meal periods . Further, DEFENDANT
21 from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFFS
22 and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and
23 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA CLASS
24 MEMBERS did not prevent these employees from being relieved of all of their duties for the
25 legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS
26 and other CALIFORNIA CLASS Members were from time to time not fully relieved of duty by
27 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
28 PLAINTIFFS and the CALIFORNIA CLASS Members with legally required meal breaks prior to

1 their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time to time.
2 Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with
3 a second off-duty meal period in some workdays in which these employees were required by
4 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFFS and
5 other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
6 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

7 97. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
8 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members
9 who were not provided a meal period, in accordance with the applicable Wage Order, one
10 additional hour of compensation at each employee's regular rate of pay for each workday that a
11 meal period was not provided.

12 98. As a proximate result of the aforementioned violations, PLAINTIFFS and
13 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and
14 seek all wages earned and due, interest, penalties, expenses and costs of suit pursuant to Civil Code
15 § 1021.5.

16 17 **FIFTH CAUSE OF ACTION**

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

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

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

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

24 100. PLAINTIFFS and other CALIFORNIA CLASS Members were not afforded legally
25 compliant rest breaks and, further, they were from time to time required to work in excess of four
26 (4) hours without being provided ten (10) minute rest periods. Further, these employees from time
27 to time were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
28 least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some

1 shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at
2 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
3 PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one hour
4 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
5 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
6 DEFENDANT and DEFENDANT's managers.

7 101. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
8 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members
9 who were not provided a rest period, in accordance with the applicable Wage Order, one additional
10 hour of compensation at each employee's regular rate of pay for each workday that rest period was
11 not provided.

12 102. As a proximate result of the aforementioned violations, PLAINTIFFS and
13 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and
14 seek all wages earned and due, interest, penalties, expenses and costs of suit pursuant to Civil Code
15 § 1021.5.

16 **SIXTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code §§ 226, 226.7]**

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

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

23 104. Cal. Labor Code § 226 provides that an employer must furnish employees with
24 an "accurate itemized" statement in writing showing:

- 25 (1) gross wages earned,
26 (2) total hours worked by the employee, except for any employee whose compensation is
solely based on a salary and who is exempt from payment of overtime under subdivision (a)
27 of Section 515 or any applicable order of the Industrial Welfare Commission,
28 (3) the number of piece-rate units earned and any applicable piece rate if the employee is
paid on a piece-rate basis,

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
(5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid,
(7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

105. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period, any premiums paid for missed meal and rest breaks, and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and other CALIFORNIA CLASS Members failed to identify, or failed to accurately identify, such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period. When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

106. DEFENDANT routinely, repeatedly, knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended

1 calculating the correct wages for all missed meal and rest breaks and the amount of employment
2 taxes which were not properly paid to state and federal tax authorities. These damages are difficult
3 to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may
4 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
5 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of
8 the CALIFORNIA CLASS herein).

9 107. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
10 are also entitled to an award of costs and reasonable attorney's fees under Labor Code § 226(h).

11
12
13 **SEVENTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 2802]**

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

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

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

21 An employer shall indemnify his or her employee for all necessary expenditures or
22 losses incurred by the employee in direct consequence of the discharge of his or her
23 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.

24 110. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
25 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS members for
26 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
27 DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS members for
28 expenses which included, but were not limited to, costs related to using their personal cellular

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

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

16 **EIGHTH CAUSE OF ACTION**

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

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

19 **(By PLAINTIFFS and the CALIFORNIA CLASS**

20 **and Against All Defendants)**

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

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

24 As used in this article:

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

26 (b) "Labor" includes labor, work, or service whether rendered or performed
27 under contract, subcontract, partnership, station plan, or other agreement if the
labor to be paid for is performed personally by the person demanding payment.
28

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

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

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

14 116. There was no definite term in PLAINTIFFS’ or any CALIFORNIA CLASS
15 Members’ employment contract.

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

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

22 118. The employment of PLAINTIFFS and many CALIFORNIA CLASS Members has
23 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.
24 Additionally, at all times during the term of PLAINTIFFS’ employment with DEFENDANT,
25 PLAINTIFFS and CALIFORNIA CLASS Members earned and accrued vested vacation and
26 holiday time on the date of their termination pursuant to DEFENDANT's uniform vacation policies
27 and applicable California law. The amount of vacation pay PLAINTIFFS and the other
28 CALIFORNIA CLASS Members earned and accumulated is evidenced by DEFENDANT’s
business records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
PLAINTIFFS and other CALIFORNIA CLASS MEMBERS by failing to pay such wages at the
regular rate of pay and more specifically the final rate of pay that included all non-discretionary
incentive compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT
underpaid vacation wages to PLAINTIFFS and other CALIFORNIA CLASS Members at their base
rates of pay, instead of including all of PLAINTIFFS’ and CALIFORNIA CLASS Members’ non-

1 discretionary incentive compensation into the vacation wage payment calculations. DEFENDANT
2 failed to specify in DEFENDANT's written vacation policy the rate at which PLAINTIFFS and
3 other CALIFORNIA LABOR CLASS Members would be paid vacation upon leaving employment
4 with DEFENDANT. As a result of DEFENDANT's unlawful practice, policy and procedure to deny
5 paying PLAINTIFFS and the other members of the CALIFORNIA CLASS all of their vested
6 vacation and holiday time, DEFENDANT failed to pay PLAINTIFFS and the members of the
7 CALIFORNIA CLASS all vested vacation time as wages due upon employment termination, in
8 violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
9 DEFENDANT underpaid waiting time penalties to PLAINTIFFS and other CALIFORNIA CLASS
10 Members at their base rates of pay, instead of including all of PLAINTIFFS' and CALIFORNIA
11 CLASS Members' non-discretionary compensation into the waiting time penalty calculations. This
12 failure by DEFENDANT is believed to be the result of DEFENDANT's unlawful, unfair and
13 deceptive refusal to provide compensation for earned, accrued and vested vacation and holiday
14 time, as well as the corresponding waiting time penalties that were paid. DEFENDANT
15 perpetrated this unlawful, unfair and deceptive practice to the detriment of PLAINTIFFS and the
16 members of the CALIFORNIA CLASS. DEFENDANT's uniform practice and policy of failing to
17 pay the CLASS Members for all vested vacation and holiday time accumulated at employment
18 termination violated and continues to violate Section 227.3 of the California Labor Code.

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

1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

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

4 **(By PLAINTIFFS and the CALIFORNIA CLASS**

5 **and Against All Defendants)**

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

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

20 122. As a matter of policy and practice, DEFENDANT pays sick pay wages to
21 PLAINTIFFS and the other members of the CALIFORNIA CLASS at the incorrect rate of pay.
22 PLAINTIFFS and the other members of the CALIFORNIA CLASS regularly use accrued sick
23 leave in the workweeks in which they also earn non-hourly remuneration. As a matter of policy
24 and practice, DEFENDANT pays sick pay wages to PLAINTIFFS and the other members of the
25 CALIFORNIA CLASS at the base hourly pay, as opposed to the regular rate of pay, which would
26 consider all non-hourly remuneration in addition to base hourly wages, or the rate resulting from
27 dividing the employee's total wages, not including overtime premium pay, by the employee's total
28 hours worked in the full pay periods of the prior 90 days of employment. As a result,

1 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS.

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

19 124. As alleged herein and as a matter of policy and practice, DEFENDANT
20 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
21 members of the CALIFORNIA CLASS all owing and underpaid sick pay wages. As a result,
22 DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code
23 provisions. PLAINTIFFS are informed and believe that DEFENDANT was advised by skilled
24 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to
25 PLAINTIFFS' allegations, especially since the California Supreme Court has explained that
26 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is entitled
27 as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick
28 pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added).

1 Because DEFENDANT willfully fails to timely pay PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS all sick pay wages due, DEFENDANT is subject to applicable penalties.

3 125. Such a pattern, practice, and uniform administration of corporate policy is
4 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA CLASS to
5 underpaid sick pay wages, including interest thereon, applicable penalties, attorney's fees, and costs
6 of suit.

7
8 **TENTH CAUSE OF ACTION**

9 **[Disability Discrimination and Retaliation For the Exercise of Rights Guaranteed Under the**
10 **FEHA, Participating in Protected Activities, and/or Opposing DEFENDANT's Failure to**
11 **Provide Such Rights]**

12 **Violation of FEHA Government Section 12900, *et. seq.***

13 **(By Plaintiff Santi Against All Defendants)**

14 126. Plaintiff Santi realleges and incorporates by reference, as though fully set forth herein,
15 the prior paragraphs of this Complaint.

16 127. On or around December 31, 2022, DEFENDANT directed Plaintiff Santi to be
17 dispatched to the fire station to retrieve sand bags as there was local flooding around the building
18 Plaintiff Santi was assigned to work at for DEFENDANT. During the handling of the heavy and
19 wet sandbags, Plaintiff Santi injured himself badly. Plaintiff Santi visited the emergency room and
20 was diagnosed with a bulging/protruding L4 disc in his back. Plaintiff Santi experienced severe
21 symptoms including extreme pain. Plaintiff Santi consulted and requested numerous times for an
22 accommodation with DEFENDANT to allow him to remain employed but in a modified light duty
23 position (Alpha 4 or another position with DEFENDANT) instead of a position that would require
24 at times manual labor as described above. Plaintiff Santi's managers failed to accommodate his
25 requests and brushed off Plaintiff Santi's complaints. Plaintiff Santi suffered mental and physical
26 issues as a result of the stress caused by DEFENDANT's failure to accommodate his requests.
27 Furthermore, the continuous stress from the injury and not being able to work caused Plaintiff Santi
28 to feel afraid of going into work. Shortly after the injury on or around January 5, 2023, Plaintiff

1 Santi went on formal disability leave. Plaintiff Santi continues to be employed with DEFENDANT
2 and on disability leave at the time of filing this Complaint. Prior to filing this action PLAINTIFF
3 exhausted his administrative remedies by filing a timely administrative complaint with the
4 Department of Fair Employment and Housing (“DFEH”) and received a DFEH Right to Sue letter
5 on May 30, 2023.

6 128. DEFENDANT discriminated against and failed to reasonably accommodate Plaintiff
7 Santi for his physical disabilities. Plaintiff Santi herein alleges that the actions taken by employees
8 of DEFENDANT against Plaintiff Santi occurred within the normal scope and course of these
9 individuals’ employment with DEFENDANT. Plaintiff Santi further alleges that these employees
10 were Plaintiff Santi’s supervisors while Plaintiff Santi was employed by DEFENDANT. However,
11 Plaintiff Santi’s request for accommodation fell on deaf ears, as DEFENDANT failed to respond to
12 Plaintiff Santi’s requests. Plaintiff Santi requested disability accommodation and raised complaints
13 while he worked for DEFENDANT and DEFENDANT retaliated against Plaintiff Santi by taking
14 adverse employment actions, including denial of employment opportunities and privileges.

15 129. DEFENDANT’s conduct, as alleged, violated FEHA, Government Code Section
16 12900, *et seq.*, and DEFENDANT committed unlawful employment practices, including the
17 following bases for liability:

18 130. Taking adverse employment actions against Plaintiff Santi, including barring,
19 refusing to transfer, retain, hire, select, and/or employ, and/or otherwise discriminating against
20 Plaintiff Santi, in whole or in part on the basis of Plaintiff Santi’s disability in violation of
21 Government Code Section 12940(a);

22 131. Harassing Plaintiff Santi and/or creating a hostile work environment, in whole or in
23 part on the basis of Plaintiff Santi disability, and/or having taken FMLA leave in violation of
24 Government Code Section 12940(j);

25 132. Failing to take all reasonable steps to prevent discrimination and harassment based
26 on disability in violation of Government Code section 12940(k);

1 133. Retaliating against Plaintiff Santi for seeking to exercise rights guaranteed under
2 FEHA, participating in protected activities, and/or opposing DEFENDANT's failure to provide
3 such rights, in violation of Government Code Section 12940(h).

4 134. As a proximate result of DEFENDANT's willful, knowing, and intentional
5 discrimination against Plaintiff Santi, Plaintiff Santi has sustained and continues to sustain
6 substantial losses of earnings and other employment benefits.

7 135. As a proximate result of DEFENDANT's willful, knowing, and intentional
8 discrimination against Plaintiff Santi, Plaintiff Santi has suffered and continues to suffer
9 humiliation, emotional distress, and physical and mental pain and anguish, all to his damage in a
10 sum according to proof.

11 136. Plaintiff Santi has incurred and continues to incur legal expenses and attorneys' fees.
12 Pursuant to Government Code Section 12965(b), Plaintiff Santi is entitled to recover reasonable
13 attorneys' fees and costs (including expert costs) in an amount according to proof.

14 137. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive
15 manner, and fraudulent manner entitling Plaintiff Santi to punitive damages against DEFENDANT.

16
17 **ELEVENTH CAUSE OF ACTION**

18 **For Failure to Provide Reasonable Accommodation**

19 **[Cal. Gov. Code § 12940(m)]**

20 **(By Plaintiff Santi and Against All Defendants)**

21 138. Plaintiff Santi realleges and incorporates by reference, as though fully set forth herein,
22 the prior paragraphs of this Complaint.

23 139. DEFENDANT was an employer who met all of the requirements set forth under the
24 California Fair Employment and Housing Act.

25 140. Plaintiff Santi suffered from a mental disability as defined under Cal. Gov. Code §
26 12926(j).

27 141. Plaintiff Santi suffered from a physical disability as defined under Cal. Gov. Code §
28 12926(m).

1 142. DEFENDANT was aware that Plaintiff Santi suffered from a physical disability as set
2 forth herein.

3 143. On or around December 31, 2022, DEFENDANT directed Plaintiff Santi to be
4 dispatched to the fire station to retrieve sand bags as there was local flooding around the building
5 Plaintiff Santi was assigned to work at for DEFENDANT. During the handling of the heavy and wet
6 sandbags, Plaintiff Santi injured himself badly. Plaintiff Santi visited the emergency room and was
7 diagnosed with a bulging/protruding L4 disc in his back. Plaintiff Santi experienced severe symptoms
8 including extreme pain. Plaintiff Santi consulted and requested numerous times for an accommodation
9 with DEFENDANT to allow him to remain employed but in a modified light duty position (Alpha 4
10 or another position with DEFENDANT) instead of a position that would require at times manual labor
11 as described above. Plaintiff Santi's managers failed to accommodate his requests and brushed off
12 Plaintiff Santi's complaints. Plaintiff Santi suffered mental and physical issues as a result of the stress
13 caused by DEFENDANT's failure to accommodate his requests. Furthermore, the continuous stress
14 from the injury and not being able to work caused Plaintiff Santi to feel afraid of going into work.
15 Shortly after the injury on or around January 5, 2023, Plaintiff Santi went on formal disability leave.
16 Plaintiff Santi continues to be employed with DEFENDANT and on disability leave at the time of filing
17 this Complaint. Prior to filing this action Plaintiff Santi exhausted his administrative remedies by filing
18 a timely administrative complaint with the Department of Fair Employment and Housing ("DFEH")
19 and received a DFEH Right to Sue letter on May 30, 2023.

20 144. DEFENDANT discriminated against and failed to reasonably accommodate Plaintiff
21 Santi for his physical disabilities. Plaintiff Santi herein alleges that the actions taken by employees of
22 DEFENDANT against Plaintiff Santi occurred within the normal scope and course of these individuals'
23 employment with DEFENDANT. Plaintiff Santi further alleges that these employees were Plaintiff
24 Santi's supervisors while Plaintiff Santi was employed by DEFENDANT. However, Plaintiff Santi's
25 request for accommodation fell on deaf ears, as DEFENDANT failed to respond to Plaintiff Santi's
26 requests. Plaintiff Santi requested disability accommodation and raised complaints while he worked
27
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1 for DEFENDANT and DEFENDANT retaliated against Plaintiff Santi by taking adverse employment
2 actions, including denial of employment opportunities and privileges.

3 145. DEFENDANT failed to provide Plaintiff Santi with reasonable accommodation for his
4 mental and physical disabilities.

5 146. As a direct and proximate result of DEFENDANT refusing to provide Plaintiff Santi
6 with reasonable accommodation, Plaintiff Santi was met with a series of adverse employment actions
7 as set forth herein. As a further direct result of DEFENDANT's failure to provide Plaintiff Santi with
8 a reasonable accommodation, Plaintiff Santi was harmed in the form of emotional and physical pain
9 and suffering.

10 147. DEFENDANT's failure to provide reasonable accommodation was a substantial factor
11 in causing Plaintiff Santi's harm.

12 148. The actions alleged herein were taken by managing agents and/or officers of
13 DEFENDANT and/or ratified by managing agents and/or officers of DEFENDANT. In so doing, said
14 managing agents and/or officers of DEFENDANT acted with malice and oppression as those terms are
15 used in California Code of Civil Procedure § 3294. As such, Plaintiff Santi is entitled to an award of
16 punitive damages.

17 149. Plaintiff Santi is also entitled to recover reasonable attorney's fees and costs pursuant
18 to Cal. Gov. Code § 12965(b).

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21 **TWELFTH CAUSE OF ACTION**

22 **For Failure to Provide Reasonable Accommodation**

23 **[Cal. Gov. Code § 12940(m)]**

24 **(By Plaintiff Fox and Against All Defendants)**

25 150. Plaintiff Fox realleges and incorporates by reference, as though fully set forth herein,
26 the prior paragraphs of this Complaint.

27 151. DEFENDANT was an employer who met all of the requirements set forth under the
28 California Fair Employment and Housing Act.

1 152. Plaintiff Fox suffered from a mental disability as defined under Cal. Gov. Code §
2 12926(j).

3 153. Plaintiff Fox suffered from a physical disability as defined under Cal. Gov. Code §
4 12926(m).

5 154. DEFENDANT was aware that Plaintiff Fox suffered from a physical disability as set
6 forth herein.
7

8 155. Subsequent to Plaintiff Fox's participation in protective activity by complaining to
9 DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
10 Plaintiff Fox to adverse employment actions by retaliating against Plaintiff Fox. Specifically, after
11 Plaintiff Fox complained to his supervisor(s) of DEFENDANT's unlawful employment practices in
12 November of 2022, including but not limited to reporting to DEFENDANT that DEFENDANT's
13 company policy of requiring Plaintiff Fox and other CALIFORNIA CLASS Members to carry a
14 firearm without a round in the chamber created a dangerous and unsafe working environment as
15 this would create an unnecessary handling of a firearm in a public space which could increase the
16 liability and chance of an accidental discharge (among many other issues), DEFENDANT
17 terminated Plaintiff Fox's employment with DEFENDANT in early January of 2023.
18 Additionally, after Plaintiff Fox reported what he reasonably deemed to be an illegal and unsafe
19 working condition, DEFENDANT also instituted a brand new policy that would require Plaintiff
20 Fox to pass a fitness test known as a "Physical Readiness Test" in order to remain employed with
21 the company. DEFENDANT knew Plaintiff Fox had pre-existing medical conditions including,
22 diabetes and hypothyroidism. In fact, Plaintiff Fox obtained a Dr.'s report that read "Due to
23 [Plaintiff Fox's pre-existing medical conditions, he is not able to participate in strenuous physical
24 activities as it will adversely affect his physical health." In December of 2022 and January of 2023,
25 Plaintiff Fox repeatedly asked DEFENDANT to accommodate his disability and place him in a role
26 that did not require strenuous physical activity (also note prior to DEFENDANT rolling out the new
27 "Physical readiness Test", Plaintiff Fox was able to perform all his work duties satisfactorily).
28 DEFENDANT denied Plaintiff Fox's requests and ultimately terminated his employment on

1 January 19, 2023. As a result, there is a causal link between the protected activity and
2 DEFENDANT's decision to terminate his employment, which is against public policy. Prior to
3 filing this action Plaintiff Fox exhausted his administrative remedies by filing a timely
4 administrative complaint with the Department of Fair Employment and Housing ("DFEH") and
5 received a DFEH Right to Sue letter on May 30, 2023.

6 156. DEFENDANT failed to provide Plaintiff Fox with reasonable accommodation for
7 his mental and physical disabilities.

8
9 157. As a direct and proximate result of DEFENDANT refusing to provide Plaintiff Fox
10 with reasonable accommodation, Plaintiff Fox was met with a series of adverse employment actions
11 as set forth herein. As a further direct result of DEFENDANT's failure to provide Plaintiff Fox with
12 a reasonable accommodation, Plaintiff Fox was harmed in the form of emotional and physical pain
13 and suffering and ultimately terminated from his employment with DEFENDANT.

14 158. DEFENDANT's failure to provide reasonable accommodation was a substantial
15 factor in causing Plaintiff Fox's harm.

16 159. The actions alleged herein were taken by managing agents and/or officers of
17 DEFENDANT and/or ratified by managing agents and/or officers of DEFENDANT. In so doing,
18 said managing agents and/or officers of DEFENDANT acted with malice and oppression as those
19 terms are used in California Code of Civil Procedure § 3294. As such, Plaintiff Fox is entitled to an
20 award of punitive damages.

21
22 160. Plaintiff Fox is also entitled to recover reasonable attorney's fees and costs pursuant
23 to Cal. Gov. Code § 12965(b).

24
25 **THIRTEENTH CAUSE OF ACTION**
26 **Wrongful Termination In Violation of Public Policy**
27 **(By Plaintiff Fox Against All Defendants)**
28

1 161. Plaintiff Fox realleges and incorporates by reference, as though fully set forth herein,
2 the prior paragraphs of this Complaint.

3 162. Subsequent to Plaintiff Fox's participation in protective activity by complaining to
4 DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected Plaintiff
5 Fox to adverse employment actions by retaliating against Plaintiff Fox. Specifically, after Plaintiff Fox
6 complained to his supervisor(s) of DEFENDANT's unlawful employment practices in November of
7 2022, including but not limited to reporting to DEFENDANT that DEFENDANT's company policy
8 of requiring Plaintiff Fox and other CALIFORNIA CLASS Members to carry a firearm without a round
9 in the chamber created a dangerous and unsafe working environment as this would create an
10 unnecessary handling of a firearm in a public space which could increase the liability and chance of
11 an accidental discharge (among many other issues), DEFENDANT terminated Plaintiff Fox's
12 employment with DEFENDANT in early January of 2023. Additionally, after Plaintiff Fox reported
13 what he reasonably deemed to be an illegal and unsafe working condition, DEFENDANT also
14 instituted a brand new policy that would require Plaintiff Fox to pass a fitness test known as a "Physical
15 Readiness Test" in order to remain employed with the company. DEFENDANT knew Plaintiff Fox
16 had pre-existing medical conditions including, diabetes and hypothyroidism. In fact, Plaintiff Fox
17 obtained a Dr.'s report that read "Due to [Plaintiff Fox's pre-existing medical conditions, he is not able
18 to participate in strenuous physical activities as it will adversely affect his physical health." In
19 December of 2022 and January of 2023, Plaintiff Fox repeatedly asked DEFENDANT to accommodate
20 his disability and place him in a role that did not require strenuous physical activity (also note prior to
21 DEFENDANT rolling out the new "Physical readiness Test", Plaintiff Fox was able to perform all his
22 work duties satisfactorily). DEFENDANT denied Plaintiff Fox's requests and ultimately terminated
23 his employment on January 19, 2023. As a result, there is a causal link between the protected activity
24 and DEFENDANT's decision to terminate his employment, which is against public policy.

25
26 163. Plaintiff Fox raised complaints of illegality while he worked for DEFENDANT and was
27 believed to be willing to raise complaints, and DEFENDANT retaliated against him by taking adverse
28 employment actions, including employment termination, against him.

164. As a proximate result of DEFENDANT's willful, knowing, and intentional, Plaintiff Fox has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her damage in a sum according to proof.

165. As a result of DEFENDANT's adverse employment actions against Plaintiff Fox, Plaintiff Fox has suffered general and special damages in sums according to proof.

166. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling Plaintiff Fox to punitive damages against DEFENDANT.

FOURTEENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698-2699.5, *et seq.*]

(By PLAINTIFFS and Against All Defendants)

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

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

169. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (i.e., hourly) (“AGGRIEVED EMPLOYEES”) during the time period of July 29,

1 2022 to June 26, 2024 or to the date of Preliminary Approval whichever is earlier (the "PAGA
2 PERIOD").

3 170. On May 30, 2023, plaintiff Fox and Santi gave written notice by electronic mail to the
4 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of
5 the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
6 On July 27, 2023, plaintiff Burk gave written notice by electronic mail to the Agency and by certified
7 mail to the employer of the specific provisions of this code alleged to have been violated as required
8 by Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS to add these allegations to the
9 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence
10 a representative civil action under PAGA pursuant to Section 2699 as the proxies of the State of
11 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

12 171. The policies, acts and practices heretofore described were and are an unlawful business
13 act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the AGGRIEVED
14 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
15 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
16 sick pay wages, (e) failed to reimburse employees for required expenses, (f) failed to provide wages
17 when due, and (g) failed to provide suitable seating, all in violation of the applicable Labor Code
18 sections listed in Labor Code §§ 201, 201.3, 201.5, 201.6, 201.7, 201.8, 201.9, 202, 203, 204 et seq.,
19 210, 216, 218, 221, 223, 225.5, 226, 226(a), 226(e), 226.2, 226.3, 226.7, 227.3, 233, 246, 256, 510,
20 512, 558, 558(a)(1)(2), 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2802, and
21 California Code of Regulations, Title 8, Section 11040, Subdivisions 5(A)-(B), California Code of
22 Regulations, Title 8, Section 11070(14), Wage Order 4-2001 section 14, and the applicable wage
23 orders, and thereby gives rise to civil penalties as a result of such conduct. PLAINTIFFS hereby seek
24 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
25 as the representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS and
26 the AGGRIEVED EMPLOYEES.
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1 **PRAYER FOR RELIEF**

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

4
5 1. On behalf of the CALIFORNIA CLASS:

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

16
17 2. On behalf of the CALIFORNIA CLASS:

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

D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

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

F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,

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

3. On behalf of Plaintiffs Fox and Santi for the Tenth, Eleventh, Twelfth and Thirteenth causes of action:

A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

B) Special and General damages according to proof;

C) Statutory damages, penalties and attorney's fees;

D) For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;

E) For loss of earnings (both past and future); and,

F) For interest at the legal rate in an amount according to proof.

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

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

1 5. On all claims:

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

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

4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
5 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.
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9 **DEMAND FOR A JURY TRIAL**

10 PLAINTIFFS demands a jury trial on issues triable to a jury.
11

12
13 Dated: July 31, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

14 By: /s/Norman B. Blumenthal

15 Norman B. Blumenthal
16 Nicholas J. De Blouw

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