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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

DORETHA JACKSON, on behalf of herself
and on behalf of all persons similarly
situated,

Plaintiffs,

v.

WHITE FIR HOLDINGS, LLC d/b/a MID-
TOWN OAKS POST-ACUTE, a Delaware
Limited Liability Company; PLUM
HEALTHCARE FOUNDATION, a
California Corporation; PLUM
HEALTHCARE GROUP, LLC, a California
Limited Liability Company; GI SIDE FUND
PLUM CORP., a Delaware Corporation;
CALIFORNIA OPCO SUB, LLC, a
Delaware Limited Liability Company; and
DOES 1-50, Inclusive,

DEFENDANTS.

Case No: **34 2021 00301656**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

Filed by Fax

CLASS ACTION COMPLAINT

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant WHITE FIR HOLDIGS, LLC d/b/a MID-TOWN OAKS POST-
6 ACUTE (“Defendant White Fir”) is a Limited Liability Company and at all relevant times
7 mentioned herein conducted and continues to conduct substantial and regular business throughout
8 California.

9 2. Defendant PLUM HEALTHCARE FOUNDATION (“Defendant PHF”) is a
10 Corporation and at all relevant times mentioned herein conducted and continues to conduct
11 substantial and regular business throughout California.

12 3. Defendant PLUM HEALTHCARE GROUP, LLC (“Defendant PHG”) is a
13 Limited Liability Company and at all relevant times mentioned herein conducted and continues
14 to conduct substantial and regular business throughout California.

15 4. Defendant GI SIDE FUND PLUM CORP. (“Defendant GI Side Fund”) is a
16 Corporation and at all relevant times mentioned herein conducted and continues to conduct
17 substantial and regular business throughout California.

18 5. Defendant CALIFORNIA OPCO SUB, LLC (“Defendant California Opco”) is a
19 Limited Liability Company and at all relevant times mentioned herein conducted and continues
20 to conduct substantial and regular business throughout California.

21 6. Defendant White Fir, Defendant PHF, Defendant PHG and Defendant GI Side
22 Fund were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the
23 company the PLAINTIFF performed work for respectively, and are therefore jointly responsible
24 as employers for the conduct alleged herein and collectively referred to herein as
25 “DEFENDANTS” and/or “DEFENDANT.”

26 7. DEFENDANTS operate skilled nursing and post-acute rehabilitation facilities,
27 which provide short-term and long-term care to their residents, including the Sacramento,
28 California location where PLAINTIFF worked.

1 8. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt
2 employee entitled to minimum wages, overtime pay and meal and rest periods from January of
3 2019 to April 28, 2020.

4 9. PLAINTIFF brings this Class Action on behalf of herself and a California class,
5 defined as all individuals who are or previously were employed by Defendant White Fir and/or
6 Defendant PHF and/or Defendant PHG and/or Defendant GI Side Fund and/or Defendant
7 California Opco in California and classified as non-exempt employees (the "CALIFORNIA
8 CLASS") at any time during the period beginning four (4) years prior to the filing of the
9 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
10 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
11 Members is under five million dollars (\$5,000,000.00).

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

23 11. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
25 presently unknown to PLAINTIFF who therefore sue these DEFENDANTS by such fictitious
26 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
27 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
28 ascertained. PLAINTIFF is informed and believe, and based upon that information and belief

1 allege, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
2 inclusive, are responsible in some manner for one or more of the events and happenings that
3 proximately caused the injuries and damages hereinafter alleged.

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

12 **THE CONDUCT**

13 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
14 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
15 worked, meaning the time during which an employee is subject to the control of an employer,
16 including all the time the employee is suffered or permitted to work. From time to time,
17 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
18 paying them for all the time they were under DEFENDANTS' control. Specifically, due to
19 DEFENDANTS' unlawful rounding policy, PLAINTIFF performed work before and after the
20 beginning of her shift, spending time under DEFENDANTS' control for which she was not
21 compensated. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
22 minimum wage and overtime compensation by regularly working without their time being
23 accurately recorded and without compensation at the applicable minimum wage and overtime
24 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
25 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
26 records.

27 14. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
28 CLASS Members were also from time to time unable to take off duty meal breaks and were not

1 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS
2 Members were from time to time interrupted during their off-duty meal breaks to complete tasks
3 for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to
4 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
5 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and
6 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which
7 these employees were required by DEFENDANTS to work ten (10) hours of work.
8 DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA CLASS Members to
9 remain on-call and on-duty during what was supposed to be their off-duty meal periods.
10 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
11 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
12 and practice.

13 15. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
14 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
15 without being provided ten (10) minute rest periods. Further, these employees were denied their
16 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
17 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
18 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
19 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
20 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
21 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
22 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
23 remain on the premises, on-duty and on-call, and subject to DEFENDANTS' control in
24 accordance with DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS
25 Members were also not provided with one hour wages in lieu thereof. DEFENDANTS' policy
26 caused PLAINTIFF and other CALIFORNIA CLASS Members to remain on-call and on-duty
27 during what was supposed to be their off-duty rest periods. As a result of their rigorous work
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1 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their
2 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

3 16. Under California law, every employer shall pay to each employee, on the
4 established payday for the period involved, not less than the applicable minimum wage for all
5 hours worked in the payroll period, whether the remuneration is measured by time, piece,
6 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
7 during which an employee is subject to the control of an employer and includes all the time the
8 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
9 other CALIFORNIA CLASS Members were from time to time required to perform work for
10 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
11 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS
12 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
13 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
14 the applicable minimum wage for all hours worked in a payroll period.

15 17. In violation of the applicable sections of the California Labor Code and the
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
17 matter of company policy, practice and procedure, intentionally and knowingly failed to
18 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
19 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
20 the payment of the correct compensation as required by California law which allowed
21 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
22 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
23 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

24 18. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
25 worked during what was supposed to be their meal breaks or otherwise off the clock,
26 DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA
27 CLASS with complete and accurate wage statements which failed to show, among other things,
28 the correct time worked, including, work performed in excess of eight (8) hours in a workday

1 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
2 pay period, and the correct penalty payments or missed meal and rest periods in violation of
3 California Labor Code Sections 226 and 226.2.

4 19. California Labor Code Section 226 requires an employer to furnish its employees
5 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
6 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
7 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
8 of the employee and only the last four digits of the employee's social security number or an
9 employee identification number other than a social security number, (8) the name and address of
10 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate by the employee.

12 20. Aside from the violations listed herein, DEFENDANTS failed to issue to
13 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
14 Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF and the
15 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
16 Code § 226.

17 21. DEFENDANTS as a matter of corporate policy, practice and procedure,
18 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
19 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
20 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
21 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
22 are required to indemnify employees for all expenses incurred in the course and scope of their
23 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
26 even though unlawful, unless the employee, at the time of obeying the directions, believed them
27 to be unlawful."
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1 22. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
2 Members as a business expense, were required by DEFENDANTS to use their own personal
3 cellular phones as a result of and in furtherance of their job duties as employees for
4 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
5 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,
6 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to
7 use their personal cell phones for work related issues. As a result, in the course of their
8 employment with DEFENDANTS the PLAINTIFFS and other members of the CALIFORNIA
9 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
10 related to the use of their personal cellular phones all on behalf of and for the benefit of
11 DEFENDANTS.

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

24 24. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
25 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
26 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
27 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
28 provide PLAINTIFF with a second off-duty meal period each workday in which she was required

1 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
2 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
3 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during
4 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
5 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate
6 policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that
7 failed to accurately display PLAINTIFF's correct time worked and wages, as well as payments
8 for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).
9 To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed
10 to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in
11 controversy for PLAINTIFF individually do not exceed the sum or value of \$75,000.

12 **JURISDICTION AND VENUE**

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

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

22 **THE CALIFORNIA CLASS**

23 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
25 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
26 individuals who are or previously were employed by Defendant White Fir and/or Defendant PHF
27 and/or Defendant PHG and/or Defendant GI Side Fund and/or Defendant California Opco in
28 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time

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

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

8 29. DEFENDANTS, as a matter of company policy, practice and procedure, and in
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
10 requirements, and the applicable provisions of California law, intentionally, knowingly, and
11 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
12 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
13 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
14 this work and permitted or suffered to permit this work.

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

25 31. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 32. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that failed to pay all wages due the CALIFORNIA CLASS for all time worked;
- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members;
- c. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly and systematically failed to record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees.

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of

1 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
2 hourly basis who was subjected to the DEFENDANTS’ deceptive practice and
3 policy which failed to provide the legally required meal and rest periods to the
4 CALIFORNIA CLASS and thereby systematically underpaid compensation to
5 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
6 as a result of DEFENDANTS’ employment practices. PLAINTIFF and the
7 members of the CALIFORNIA CLASS were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
9 misconduct engaged in by DEFENDANTS; and

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

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

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

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

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

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

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

27 ii. Class certification will obviate the need for unduly duplicative litigation
28 that would create the risk of:

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- 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;
- 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANTS' employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual

CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANTS; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

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

38. DEFENDANTS, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

39. DEFENDANTS maintain records from which the Court can ascertain and identify by name and job title, each of DEFENDANTS’ employees who have been systematically, intentionally and uniformly subjected to DEFENDANT’S company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

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

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

- 3 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
4 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
5 missed meal and rest breaks in violation of the California Labor Code and
6 California regulations and the applicable California Wage Order;
7 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
8 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
9 thirty (30) minute meal breaks and rest periods;
10 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
11 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
12 statements;
13 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
14 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
15 California Labor Code and California regulations and the applicable California
16 Wage Order;
17 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
18 compensation for time worked, including overtime worked, under the overtime
19 pay requirements of California law;
20 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
21 conduct;
22 g. The proper measure of damages and penalties owed to the members of the
23 CALIFORNIA LABOR SUB-CLASS; and
24 h. Whether DEFENDANTS' conduct was willful.

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

- 27 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
28 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for

overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;

- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

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

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

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

- 25 a. Without class certification and determination of declaratory, injunctive, statutory
26 and other legal questions within the class format, prosecution of separate actions
27 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
28 the risk of:

- 1 i. Inconsistent or varying adjudications with respect to individual members
2 of the CALIFORNIA LABOR SUB-CLASS which would establish
3 incompatible standards of conduct for the parties opposing the
4 CALIFORNIA LABOR SUB-CLASS; or
- 5 ii. Adjudication with respect to individual members of the CALIFORNIA
6 LABOR SUB-CLASS which would as a practical matter be dispositive of
7 interests of the other members not party to the adjudication or substantially
8 impair or impede their ability to protect their interests.
- 9 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
10 refused to act on grounds generally applicable to the CALIFORNIA LABOR
11 SUB-CLASS, making appropriate class-wide relief with respect to the
12 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
13 failed to pay all wages due for all time worked by the members of the
14 CALIFORNIA LABOR SUB-CLASS as required by law;
- 15 c. Common questions of law and fact predominate as to the members of the
16 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
17 of California Law as listed above, and predominate over any question affecting
18 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
19 Action is superior to other available methods for the fair and efficient adjudication
20 of the controversy, including consideration of:
- 21 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
22 in individually controlling the prosecution or defense of separate actions in
23 that the substantial expense of individual actions will be avoided to recover
24 the relatively small amount of economic losses sustained by the individual
25 CALIFORNIA LABOR SUB-CLASS Members when compared to the
26 substantial expense and burden of individual prosecution of this litigation;
- 27 ii. Class certification will obviate the need for unduly duplicative litigation
28 that would create the risk of:

- 1 1. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA LABOR SUB-CLASS, which
3 would establish incompatible standards of conduct for the
4 DEFENDANTS; and/or,
5 2. Adjudications with respect to individual members of the
6 CALIFORNIA LABOR SUB-CLASS would as a practical matter
7 be dispositive of the interests of the other members not parties to
8 the adjudication or substantially impair or impede their ability to
9 protect their interests;
10 iii. In the context of wage litigation because a substantial number of individual
11 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
12 legal rights out of fear of retaliation by DEFENDANTS, which may
13 adversely affect an individual’s job with DEFENDANTS or with a
14 subsequent employer, the Class Action is the only means to assert their
15 claims through a representative; and,
16 iv. A class action is superior to other available methods for the fair and
17 efficient adjudication of this litigation because class treatment will obviate
18 the need for unduly and unnecessary duplicative litigation that is likely to
19 result in the absence of certification of this action pursuant to Cal. Code of
20 Civ. Proc. § 382.
21 45. This Court should permit this action to be maintained as a Class Action pursuant
22 to Cal. Code of Civ. Proc. § 382 because:
23 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
24 CLASS predominate over any question affecting only individual CALIFORNIA
25 LABOR SUB-CLASS Members;
26 b. A Class Action is superior to any other available method for the fair and efficient
27 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
28 CLASS because in the context of employment litigation a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
2 their rights individually out of fear of retaliation or adverse impact on their
3 employment;

4 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
5 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
6 before the Court;

7 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
8 not be able to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

10 e. There is a community of interest in obtaining appropriate legal and equitable relief
11 for the acts of unfair competition, statutory violations and other improprieties, and
12 in obtaining adequate compensation for the damages and injuries which
13 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-
14 CLASS;

15 f. There is a community of interest in ensuring that the combined assets of
16 DEFENDANTS are sufficient to adequately compensate the members of the
17 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

18 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
19 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
20 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

21 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
23 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
24 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
25 PERIOD; and

26 i. Class treatment provides manageable judicial treatment calculated to bring an
27 efficient and rapid conclusion to all litigation of all wage and hour related claims
28

arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)

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

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

49. By the conduct alleged herein, DEFENDANTS have engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

50. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
3 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 51. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
6 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
7 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
8 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
9 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
10 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
11 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
12 wrongfully withheld.

13 52. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
14 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
15 other members of the CALIFORNIA CLASS to be underpaid during their employment with
16 DEFENDANTS.

17 53. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
18 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
19 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

25 55. PLAINTIFF further demands on behalf of herself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
27 not timely provided as required by law.
28

1 56. By and through the unlawful and unfair business practices described herein,
2 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
3 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of
4 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
5 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly compete
6 against competitors who comply with the law.

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

12 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
13 and do, seek such relief as may be necessary to restore to them the money and property which
14 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
15 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
16 business practices, including earned but unpaid wages.

17 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
18 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
20 engaging in any unlawful and unfair business practices in the future.

21 60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
24 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
27 unlawful and unfair business practices.

28 ///

SECOND CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGES
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANTS)**

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

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

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

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

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

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

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

1 68. In committing these violations of the California Labor Code, DEFENDANTS
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
4 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other
5 benefits in violation of the California Labor Code, the Industrial Welfare Commission
6 requirements and other applicable laws and regulations.

7 69. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
9 the correct minimum wage compensation for their time worked for DEFENDANTS.

10 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
12 they were entitled to, constituting a failure to pay all earned wages.

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

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

25 73. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with requisite compensation, DEFENDANTS acted and continues
28 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
or the consequences to them, and with the despicable intent of depriving them of their property

1 and legal rights, and otherwise causing them injury in order to increase company profits at the
2 expense of these employees.

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

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION** 16 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

17 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
18 **DEFENDANTS)**

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

22 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
25 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
26 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
27 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
28 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

11 80. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
14 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
15 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
17 to pay these employees the correct applicable overtime wages for all overtime worked.

18 81. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
20 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
21 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
22 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
23 in any workweek.

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

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

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

12 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
14 they were entitled to, constituting a failure to pay all earned wages.

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

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

27 88. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice

1 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
3 overtime rate.

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

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

25 **(Cal. Lab. Code §§ 226.7 & 512)**

26 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
27 **DEFENDANTS)**

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

1 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
2 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
3 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of
4 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
5 not prevent these employees from being relieved of all of their duties for the legally required off-
6 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
8 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
9 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
10 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
11 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
12 therefore forfeited meal breaks without additional compensation and in accordance with
13 DEFENDANTS' strict corporate policy and practice.

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

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

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

24 **(Cal. Lab. Code §§ 226.7 & 512)**

25 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
26 **DEFENDANTS)**

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

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

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

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

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

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

21 101. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate
22 employees with an “accurate itemized” statement in writing showing:

- 23 a. The total hours of compensable rest and recovery periods, the rate of
24 compensation, and the gross wages paid for those periods during the
25 pay period; and
- 26 b. The total hours of other nonproductive time, the rate of
27 compensation, and the gross wages paid for that time during the pay
28 period.

1 102. When DEFENDANTS did not accurately record PLAINTIFF'S and other
2 CALIFORNIA CLASS Members' wages, including overtime wages, owed, DEFENDANTS also
3 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete
4 and accurate wage statements which failed to show, among other things, the correct overtime rate,
5 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other
6 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall
7 furnish each of his or her employees with an accurate itemized wage statement in writing showing,
8 among other things, gross wages earned and all applicable hourly rates in effect during the pay
9 period and the corresponding amount of time worked at each hourly rate. Aside from the
10 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an
11 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
12 As a result, from time to time DEFENDANTS provided PLAINTIFF and the other members of
13 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

25 ///

26 ///

27 ///

28 ///

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

**(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
DEFENDANTS)**

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

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

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

106. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA

LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

EIGHTH CAUSE OF ACTION
FAILURE TO PAY WAGES WHEN DUE
(Cal. Lab. Code §§201, 202, 203)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all DEFENDANTS)

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

109. Cal. Lab. Code § 200 provides that:

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

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

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

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

1 mailing shall constitute the date of payment for purposes of the requirement to
2 provide payment within 72 hours of the notice of quitting.

3 112. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
4 CLASS Members' employment contract.

5 113. Cal. Lab. Code § 203 provides:

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

11 114. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
12 Members terminated and DEFENDANTS have not tendered payment of wages, to these
13 employees who missed meal and rest breaks, as required by law.

14 115. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
15 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
16 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
17 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
18 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
19 costs as allowed by law.

20 **NINTH CAUSE OF ACTION**

21 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

22 **(Cal. Lab. Code §§2698 et seq.)**

23 **(Alleged by PLAINTIFF against all Defendants)**

24 116. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
25 herein, the prior paragraphs of this Complaint.

26 117. PAGA is a mechanism by which the State of California itself can enforce state
27 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
28 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

1 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
2 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
3 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
4 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

5 118. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, bring this Representative Action on behalf of the State of California with respect to
8 themselves and all individuals who are or previously were employed by Defendant White Fir
9 and/or Defendant PHF and/or Defendant PHG and/or Defendant GI Side Fund and/or Defendant
10 California Opco and classified as non-exempt employees in California during the time period of
11 March 24, 2020 until the present (the "AGGRIEVED EMPLOYEES").

12 119. On March 24, 2021, PLAINTIFF gave written notice by certified mail to the Labor
13 and Workforce Development Agency (the "Agency") and the employer of the specific
14 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
15 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
16 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
17 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
18 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
19 EMPLOYEES as herein defined.

20 120. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because DEFENDANTS (a) failed to properly record and pay
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
23 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
24 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to
25 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
26 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
27 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198,
28 1199, 2802, and 2804 and the applicable Industrial Wage Order(s), and thereby gives rise to

1 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly
8 and severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

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

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

- 21 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
22 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
23 action pursuant to Cal. Code of Civ. Proc. § 382;
24 b. Compensatory damages, according to proof at trial, including compensatory
25 damages for minimum wages, overtime wages, unreimbursed expenses, and other
26 compensation due to PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
28 CLASS PERIOD plus interest thereon at the statutory rate;

- 1 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per member of the
5 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
6 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
7 an award of costs for violation of Cal. Lab. Code § 226; and,
- 8 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
9 CLASS as a penalty from the due date thereof at the same rate until paid or until an
10 action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 11 3. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES:
- 13 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
14 General Act of 2004
- 15 4. On all claims:
- 16 a. An award of interest, including prejudgment interest at the legal rate;
- 17 b. Such other and further relief as the Court deems just and equitable; and
- 18 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
19 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197
20 and/or §2802.

21
22 DATED: May 27, 2021
23

24 **ZAKAY LAW GROUP, APLC**

25
26 By: 

27 Shani O. Zakay
28 Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

DATED: May 27, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs

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EXHIBIT 1



Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com

March 24, 2021

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

PLUM HEALTHCARE FOUNDATION
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Via Certified Mail with Return Receipt
No. 7020 2450 0001 4373 5935

WHITE FIR HOLDINGS, LLC
PLUM HEALTHCARE GROUP, LLC
GI SIDE FUND PLUM CORP.
CALIFORNIA OPCO SUB, LLC
c/o JENNIFER M. STERNSHEIN ESQ.
5316 E. CHAPMAN AVE
ORANGE CA 92869
Via Certified Mail with Return Receipt
No. 7020 2450 0001 4373 5300

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents DORETHA JACKSON (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against WHITE FIR HOLDINGS, LLC d/b/a MID-TOWN OAKS POST-ACUTE, PLUM HEALTHCARE FOUNDATION, PLUM HEALTHCARE GROUP, LLC, GI SIDE FUND PLUM CORP., and CALIFORNIA OPCO SUB, LLC (“Defendants”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendants in California from January of 2019 to April 28, 2020. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during their employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants' conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
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JCL LAW FIRM, APC
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Facsimile: (619) 599-8291

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

DORETHA JACKSON, on behalf of herself
and on behalf of all persons similarly
situated,

Plaintiffs,

v.

WHITE FIR HOLDINGS, LLC d/b/a MID-
TOWN OAKS POST-ACUTE, a Delaware
Limited Liability Company; PLUM
HEALTHCARE FOUNDATION, a
California Corporation; PLUM
HEALTHCARE GROUP, LLC, a California
Limited Liability Company; GI SIDE FUND
PLUM CORP., a Delaware Corporation;
CALIFORNIA OPCO SUB, LLC, a
Delaware Limited Liability Company; and
DOES 1-50, Inclusive,

DEFENDANTS.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant WHITE FIR HOLDIGS, LLC d/b/a MID-TOWN OAKS POST-
6 ACUTE (“Defendant White Fir”) is a Limited Liability Company and at all relevant times
7 mentioned herein conducted and continues to conduct substantial and regular business throughout
8 California.

9 2. Defendant PLUM HEALTHCARE FOUNDATION (“Defendant PHF”) is a
10 Corporation and at all relevant times mentioned herein conducted and continues to conduct
11 substantial and regular business throughout California.

12 3. Defendant PLUM HEALTHCARE GROUP, LLC (“Defendant PHG”) is a
13 Limited Liability Company and at all relevant times mentioned herein conducted and continues
14 to conduct substantial and regular business throughout California.

15 4. Defendant GI SIDE FUND PLUM CORP. (“Defendant GI Side Fund”) is a
16 Corporation and at all relevant times mentioned herein conducted and continues to conduct
17 substantial and regular business throughout California.

18 5. Defendant CALIFORNIA OPCO SUB, LLC (“Defendant California Opco”) is a
19 Limited Liability Company and at all relevant times mentioned herein conducted and continues
20 to conduct substantial and regular business throughout California.

21 6. Defendant White Fir, Defendant PHF, Defendant PHG and Defendant GI Side
22 Fund were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the
23 company the PLAINTIFF performed work for respectively, and are therefore jointly responsible
24 as employers for the conduct alleged herein and collectively referred to herein as
25 “DEFENDANTS” and/or “DEFENDANT.”

26 7. DEFENDANTS operate skilled nursing and post-acute rehabilitation facilities,
27 which provide short-term and long-term care to their residents, including the Sacramento,
28 California location where PLAINTIFF worked.

1 8. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt
2 employee entitled to minimum wages, overtime pay and meal and rest periods from January of
3 2019 to April 28, 2020.

4 9. PLAINTIFF brings this Class Action on behalf of herself and a California class,
5 defined as all individuals who are or previously were employed by Defendant White Fir and/or
6 Defendant PHF and/or Defendant PHG and/or Defendant GI Side Fund and/or Defendant
7 California Opco in California and classified as non-exempt employees (the "CALIFORNIA
8 CLASS") at any time during the period beginning four (4) years prior to the filing of the
9 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
10 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
11 Members is under five million dollars (\$5,000,000.00).

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

23 11. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
25 presently unknown to PLAINTIFF who therefore sue these DEFENDANTS by such fictitious
26 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
27 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
28 ascertained. PLAINTIFF is informed and believe, and based upon that information and belief

1 allege, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
2 inclusive, are responsible in some manner for one or more of the events and happenings that
3 proximately caused the injuries and damages hereinafter alleged.

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

12 **THE CONDUCT**

13 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
14 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
15 worked, meaning the time during which an employee is subject to the control of an employer,
16 including all the time the employee is suffered or permitted to work. From time to time,
17 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
18 paying them for all the time they were under DEFENDANTS' control. Specifically, due to
19 DEFENDANTS' unlawful rounding policy, PLAINTIFF performed work before and after the
20 beginning of her shift, spending time under DEFENDANTS' control for which she was not
21 compensated. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
22 minimum wage and overtime compensation by regularly working without their time being
23 accurately recorded and without compensation at the applicable minimum wage and overtime
24 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
25 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
26 records.

27 14. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
28 CLASS Members were also from time to time unable to take off duty meal breaks and were not

1 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS
2 Members were from time to time interrupted during their off-duty meal breaks to complete tasks
3 for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to
4 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
5 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and
6 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which
7 these employees were required by DEFENDANTS to work ten (10) hours of work.
8 DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA CLASS Members to
9 remain on-call and on-duty during what was supposed to be their off-duty meal periods.
10 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
11 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
12 and practice.

13 15. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
14 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
15 without being provided ten (10) minute rest periods. Further, these employees were denied their
16 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
17 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
18 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
19 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
20 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
21 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
22 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
23 remain on the premises, on-duty and on-call, and subject to DEFENDANTS' control in
24 accordance with DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS
25 Members were also not provided with one hour wages in lieu thereof. DEFENDANTS' policy
26 caused PLAINTIFF and other CALIFORNIA CLASS Members to remain on-call and on-duty
27 during what was supposed to be their off-duty rest periods. As a result of their rigorous work
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1 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their
2 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

3 16. Under California law, every employer shall pay to each employee, on the
4 established payday for the period involved, not less than the applicable minimum wage for all
5 hours worked in the payroll period, whether the remuneration is measured by time, piece,
6 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
7 during which an employee is subject to the control of an employer and includes all the time the
8 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
9 other CALIFORNIA CLASS Members were from time to time required to perform work for
10 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
11 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS
12 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
13 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
14 the applicable minimum wage for all hours worked in a payroll period.

15 17. In violation of the applicable sections of the California Labor Code and the
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
17 matter of company policy, practice and procedure, intentionally and knowingly failed to
18 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
19 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
20 the payment of the correct compensation as required by California law which allowed
21 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
22 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
23 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

24 18. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
25 worked during what was supposed to be their meal breaks or otherwise off the clock,
26 DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA
27 CLASS with complete and accurate wage statements which failed to show, among other things,
28 the correct time worked, including, work performed in excess of eight (8) hours in a workday

1 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
2 pay period, and the correct penalty payments or missed meal and rest periods in violation of
3 California Labor Code Sections 226 and 226.2.

4 19. California Labor Code Section 226 requires an employer to furnish its employees
5 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
6 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
7 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
8 of the employee and only the last four digits of the employee's social security number or an
9 employee identification number other than a social security number, (8) the name and address of
10 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate by the employee.

12 20. Aside from the violations listed herein, DEFENDANTS failed to issue to
13 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
14 Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF and the
15 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
16 Code § 226.

17 21. DEFENDANTS as a matter of corporate policy, practice and procedure,
18 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
19 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
20 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
21 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
22 are required to indemnify employees for all expenses incurred in the course and scope of their
23 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
26 even though unlawful, unless the employee, at the time of obeying the directions, believed them
27 to be unlawful."
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1 22. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
2 Members as a business expense, were required by DEFENDANTS to use their own personal
3 cellular phones as a result of and in furtherance of their job duties as employees for
4 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
5 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,
6 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to
7 use their personal cell phones for work related issues. As a result, in the course of their
8 employment with DEFENDANTS the PLAINTIFFS and other members of the CALIFORNIA
9 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
10 related to the use of their personal cellular phones all on behalf of and for the benefit of
11 DEFENDANTS.

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

24 24. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
25 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
26 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
27 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
28 provide PLAINTIFF with a second off-duty meal period each workday in which she was required

1 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
2 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
3 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during
4 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
5 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate
6 policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that
7 failed to accurately display PLAINTIFF's correct time worked and wages, as well as payments
8 for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).
9 To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed
10 to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in
11 controversy for PLAINTIFF individually do not exceed the sum or value of \$75,000.

12 **JURISDICTION AND VENUE**

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

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

22 **THE CALIFORNIA CLASS**

23 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
25 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
26 individuals who are or previously were employed by Defendant White Fir and/or Defendant PHF
27 and/or Defendant PHG and/or Defendant GI Side Fund and/or Defendant California Opco in
28 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time

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

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

8 29. DEFENDANTS, as a matter of company policy, practice and procedure, and in
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
10 requirements, and the applicable provisions of California law, intentionally, knowingly, and
11 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
12 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
13 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
14 this work and permitted or suffered to permit this work.

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

25 31. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 32. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that failed to pay all wages due the CALIFORNIA CLASS for all time worked;
- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members;
- c. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly and systematically failed to record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees.

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of

1 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
2 hourly basis who was subjected to the DEFENDANTS’ deceptive practice and
3 policy which failed to provide the legally required meal and rest periods to the
4 CALIFORNIA CLASS and thereby systematically underpaid compensation to
5 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
6 as a result of DEFENDANTS’ employment practices. PLAINTIFF and the
7 members of the CALIFORNIA CLASS were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
9 misconduct engaged in by DEFENDANTS; and

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

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

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

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

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

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

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

27 ii. Class certification will obviate the need for unduly duplicative litigation
28 that would create the risk of:

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- 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;
- 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANTS’ employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual

CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANTS; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

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

38. DEFENDANTS, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

39. DEFENDANTS maintain records from which the Court can ascertain and identify by name and job title, each of DEFENDANTS’ employees who have been systematically, intentionally and uniformly subjected to DEFENDANT’S company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

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

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

- 3 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
4 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
5 missed meal and rest breaks in violation of the California Labor Code and
6 California regulations and the applicable California Wage Order;
- 7 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
8 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
9 thirty (30) minute meal breaks and rest periods;
- 10 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
11 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
12 statements;
- 13 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
14 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
15 California Labor Code and California regulations and the applicable California
16 Wage Order;
- 17 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
18 compensation for time worked, including overtime worked, under the overtime
19 pay requirements of California law;
- 20 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
21 conduct;
- 22 g. The proper measure of damages and penalties owed to the members of the
23 CALIFORNIA LABOR SUB-CLASS; and
- 24 h. Whether DEFENDANTS' conduct was willful.

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

- 27 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
28 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for

overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;

- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

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

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

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

- 25 a. Without class certification and determination of declaratory, injunctive, statutory
26 and other legal questions within the class format, prosecution of separate actions
27 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
28 the risk of:

- 1 i. Inconsistent or varying adjudications with respect to individual members
2 of the CALIFORNIA LABOR SUB-CLASS which would establish
3 incompatible standards of conduct for the parties opposing the
4 CALIFORNIA LABOR SUB-CLASS; or
- 5 ii. Adjudication with respect to individual members of the CALIFORNIA
6 LABOR SUB-CLASS which would as a practical matter be dispositive of
7 interests of the other members not party to the adjudication or substantially
8 impair or impede their ability to protect their interests.
- 9 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
10 refused to act on grounds generally applicable to the CALIFORNIA LABOR
11 SUB-CLASS, making appropriate class-wide relief with respect to the
12 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
13 failed to pay all wages due for all time worked by the members of the
14 CALIFORNIA LABOR SUB-CLASS as required by law;
- 15 c. Common questions of law and fact predominate as to the members of the
16 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
17 of California Law as listed above, and predominate over any question affecting
18 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
19 Action is superior to other available methods for the fair and efficient adjudication
20 of the controversy, including consideration of:
- 21 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
22 in individually controlling the prosecution or defense of separate actions in
23 that the substantial expense of individual actions will be avoided to recover
24 the relatively small amount of economic losses sustained by the individual
25 CALIFORNIA LABOR SUB-CLASS Members when compared to the
26 substantial expense and burden of individual prosecution of this litigation;
- 27 ii. Class certification will obviate the need for unduly duplicative litigation
28 that would create the risk of:

- 1 1. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA LABOR SUB-CLASS, which
3 would establish incompatible standards of conduct for the
4 DEFENDANTS; and/or,
5 2. Adjudications with respect to individual members of the
6 CALIFORNIA LABOR SUB-CLASS would as a practical matter
7 be dispositive of the interests of the other members not parties to
8 the adjudication or substantially impair or impede their ability to
9 protect their interests;
10 iii. In the context of wage litigation because a substantial number of individual
11 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
12 legal rights out of fear of retaliation by DEFENDANTS, which may
13 adversely affect an individual’s job with DEFENDANTS or with a
14 subsequent employer, the Class Action is the only means to assert their
15 claims through a representative; and,
16 iv. A class action is superior to other available methods for the fair and
17 efficient adjudication of this litigation because class treatment will obviate
18 the need for unduly and unnecessary duplicative litigation that is likely to
19 result in the absence of certification of this action pursuant to Cal. Code of
20 Civ. Proc. § 382.
21 45. This Court should permit this action to be maintained as a Class Action pursuant
22 to Cal. Code of Civ. Proc. § 382 because:
23 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
24 CLASS predominate over any question affecting only individual CALIFORNIA
25 LABOR SUB-CLASS Members;
26 b. A Class Action is superior to any other available method for the fair and efficient
27 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
28 CLASS because in the context of employment litigation a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
2 their rights individually out of fear of retaliation or adverse impact on their
3 employment;

4 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
5 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
6 before the Court;

7 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
8 not be able to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

10 e. There is a community of interest in obtaining appropriate legal and equitable relief
11 for the acts of unfair competition, statutory violations and other improprieties, and
12 in obtaining adequate compensation for the damages and injuries which
13 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-
14 CLASS;

15 f. There is a community of interest in ensuring that the combined assets of
16 DEFENDANTS are sufficient to adequately compensate the members of the
17 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

18 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
19 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
20 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

21 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
23 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
24 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
25 PERIOD; and

26 i. Class treatment provides manageable judicial treatment calculated to bring an
27 efficient and rapid conclusion to all litigation of all wage and hour related claims
28

arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)

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

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

49. By the conduct alleged herein, DEFENDANTS have engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

50. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
3 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 51. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
6 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
7 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
8 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
9 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
10 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
11 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
12 wrongfully withheld.

13 52. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
14 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
15 other members of the CALIFORNIA CLASS to be underpaid during their employment with
16 DEFENDANTS.

17 53. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
18 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
19 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

25 55. PLAINTIFF further demands on behalf of herself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
27 not timely provided as required by law.
28

1 56. By and through the unlawful and unfair business practices described herein,
2 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
3 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of
4 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
5 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly compete
6 against competitors who comply with the law.

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

12 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
13 and do, seek such relief as may be necessary to restore to them the money and property which
14 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
15 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
16 business practices, including earned but unpaid wages.

17 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
18 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
20 engaging in any unlawful and unfair business practices in the future.

21 60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
24 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
27 unlawful and unfair business practices.

28 ///

SECOND CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGES
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANTS)**

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

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

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

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

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

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

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

1 68. In committing these violations of the California Labor Code, DEFENDANTS
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
4 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other
5 benefits in violation of the California Labor Code, the Industrial Welfare Commission
6 requirements and other applicable laws and regulations.

7 69. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
9 the correct minimum wage compensation for their time worked for DEFENDANTS.

10 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
12 they were entitled to, constituting a failure to pay all earned wages.

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

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

25 73. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with requisite compensation, DEFENDANTS acted and continues
28 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
or the consequences to them, and with the despicable intent of depriving them of their property

1 and legal rights, and otherwise causing them injury in order to increase company profits at the
2 expense of these employees.

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

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION** 16 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

17 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
18 **DEFENDANTS)**

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

22 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
25 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
26 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
27 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
28 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

11 80. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
14 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
15 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
17 to pay these employees the correct applicable overtime wages for all overtime worked.

18 81. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
20 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
21 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
22 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
23 in any workweek.

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

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

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

12 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
14 they were entitled to, constituting a failure to pay all earned wages.

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

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

27 88. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice

1 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
3 overtime rate.

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

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

25 **(Cal. Lab. Code §§ 226.7 & 512)**

26 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
27 **DEFENDANTS)**

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

1 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
2 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
3 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of
4 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
5 not prevent these employees from being relieved of all of their duties for the legally required off-
6 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
8 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
9 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
10 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
11 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
12 therefore forfeited meal breaks without additional compensation and in accordance with
13 DEFENDANTS' strict corporate policy and practice.

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

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

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

24 **(Cal. Lab. Code §§ 226.7 & 512)**

25 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
26 **DEFENDANTS)**

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

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

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

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

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

24 **(Cal. Lab. Code §§ 226 and 226.2)**

25 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
26 **DEFENDANTS)**

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

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

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

21 101. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate
22 employees with an “accurate itemized” statement in writing showing:

- 23 a. The total hours of compensable rest and recovery periods, the rate of
24 compensation, and the gross wages paid for those periods during the
25 pay period; and
- 26 b. The total hours of other nonproductive time, the rate of
27 compensation, and the gross wages paid for that time during the pay
28 period.

1 102. When DEFENDANTS did not accurately record PLAINTIFF'S and other
2 CALIFORNIA CLASS Members' wages, including overtime wages, owed, DEFENDANTS also
3 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete
4 and accurate wage statements which failed to show, among other things, the correct overtime rate,
5 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other
6 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall
7 furnish each of his or her employees with an accurate itemized wage statement in writing showing,
8 among other things, gross wages earned and all applicable hourly rates in effect during the pay
9 period and the corresponding amount of time worked at each hourly rate. Aside from the
10 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an
11 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
12 As a result, from time to time DEFENDANTS provided PLAINTIFF and the other members of
13 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

**(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
DEFENDANTS)**

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

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

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

106. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA

LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

EIGHTH CAUSE OF ACTION
FAILURE TO PAY WAGES WHEN DUE
(Cal. Lab. Code §§201, 202, 203)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all DEFENDANTS)

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

109. Cal. Lab. Code § 200 provides that:

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

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

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

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

mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

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

113. Cal. Lab. Code § 203 provides:

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

114. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANTS have not tendered payment of wages, to these employees who missed meal and rest breaks, as required by law.

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

22 3. On all claims:

- 23 a. An award of interest, including prejudgment interest at the legal rate;
- 24 b. Such other and further relief as the Court deems just and equitable; and
- 25 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
26 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197
27 and/or §2802.

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1 DATED: _____, 2021

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3 **ZAKAY LAW GROUP, APLC**

4 By: _____

5 Shani O. Zakay
6 Attorney for Plaintiffs

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8 **DEMAND FOR A JURY TRIAL**

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

10 DATED: _____, 2021

11 **ZAKAY LAW GROUP, APLC**

12
13 By: _____

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15 Shani O. Zakay
16 Attorney for Plaintiffs