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ELECTRONICALLY FILEDSuperior Court of California
County of Alameda

10/09/2024

Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy**SUPERIOR COURT OF THE STATE OF CALIFORNIA****IN AND FOR THE COUNTY OF ALAMEDA**

DANIELA ARBELAEZ ACEVEDO and MYRELLA
THOMAS, as individuals, and on behalf of themselves
and on behalf of all persons similarly situated,

Plaintiffs,

vs.

ACES 2020 I, LLC, a Limited Liability Company; and
DOES 2 through 50, inclusive,

Defendants.

Case No. 24CV061880

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

1. Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
2. Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1194.2 1197 & 1197.1;
3. Failure to Pay Overtime Wages in Violation of Cal. Lab. Code § 510 & 1194;
4. Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order;
5. Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order;
6. Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226;
7. Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802;
8. Failure to Pay Sick Pay Wages in Violation of Cal. Lab. Code §§200-203, 218, 233, 246 *et seq.*
9. Untimely Payment of Wages in Violation of Cal. Lab Code §§ 204, 210, 218;
10. Waiting Time Penalties in Violation of Cal. Lab Code §§ 201 *et seq.*;
11. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1174, 1194, 1197, 1197.1, 1198, 2800, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

DEMAND FOR A JURY TRIAL

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1 Daniela Arbelaez Acevedo and Myrella Thomas (collectively, “PLAINTIFFS”), as
2 individuals, and on behalf of themselves and all other similarly situated current and former
3 employees allege on information and belief, except for their own acts and knowledge which are
4 based on personal knowledge, the following.

5
6 **THE PARTIES**

7 1. ACES 2020 I, LLC (“DEFENDANT”) is a limited liability company that at all
8 relevant times mentioned herein conducted and continues to conduct substantial business in
9 California.

10 2. DEFENDANT provides autism therapy and intervention services.

11 3. Plaintiff Daniela Arbelaez Acevedo has been employed by DEFENDANT in
12 California since January of 2020 and has been at all times classified by DEFENDANT as a non-
13 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
14 periods and payment of minimum and overtime wages due for all time worked. Plaintiff Myrella
15 Thomas has been employed by DEFENDANT in California since October of 2021, and has
16 been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
17 basis, and entitled to the legally required meal and rest periods and payment of minimum and
18 overtime wages due for all time worked.

19 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California
20 class, defined as all individuals who are or previously were employed by DEFENDANT who
21 were classified as non-exempt in the State of California (the “CALIFORNIA CLASS”) from
22 January 1, 2022 to the earlier of preliminary approval or November 5, 2024 (the
23 “CALIFORNIA CLASS PERIOD”) except any named plaintiff in the matter *Allen v. ACES*
24 *2020 I, LLC et al.*, Superior Court for the County of Contra Costa, Case No. C23-00916. The
25 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
26 million dollars (\$5,000,000.00).

27 5. PLAINTIFFS bring this Class Action on behalf of themselves and a
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their

1 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's
2 policy and practice which failed to lawfully compensate these employees. DEFENDANT's
3 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
4 whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and the
5 other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
7 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA
8 CLASS who have been economically injured by DEFENDANT's past and current unlawful
9 conduct, and all other appropriate legal and equitable relief.

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

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

27
28 **THE CONDUCT**

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

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

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

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

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

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

1 off the clock without paying them for all the time they were under DEFENDANT's control.
2 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
3 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
4 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by
5 working without their time being accurately recorded and without compensation at the
6 applicable minimum wage and overtime wage rates. To the extent that the time worked off
7 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
8 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
9 1197, and 1197.1. On several occasions, DEFENDANT expected PLAINTIFFS to show up to
10 the worksite earlier than scheduled to complete administrative tasks such as responding to emails
11 and completing paperwork for her clients. Likewise, when PLAINTIFFS finished a session with her
12 clients, often elementary-aged students, she would need to wait after her shift ended to stay with the
13 student until parents arrived so as not to leave the child unattended. DEFENDANT did not pay
14 PLAINTIFFS for hours they worked before or after their scheduled client sessions. This practice of
15 only paying for productive hours or hours in session with clients, excluding preparation time and
16 non-session time, was applied to other class members as well. Defendant also failed to pay
17 PLAINTIFFS and class members for time spent obtaining and renewing necessary job certifications.

18 14. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
19 other members of the CALIFORNIA CLASS with complete and accurate wage statements
20 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
21 Code § 226 provides that every employer shall furnish each of his or her employees with an
22 accurate itemized wage statement in writing showing, among other things, gross wages
23 earned and all applicable hourly rates in effect during the pay period and the corresponding
24 amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA CLASS
25 Members were paid on an hourly basis. As such, the wage statements should reflect all
26 applicable hourly rates during the pay period and the total hours worked, and the applicable
27 pay period in which the wages were earned pursuant to California Labor Code Section
28 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and other

1 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
2 wage statements failed to identify the accurate total hours worked each pay period. When
3 the hours shown on the wage statements were added up, they did not equal the actual total
4 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
5 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS
6 an itemized wage statement that lists all the requirements under California Labor Code 226
7 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
8 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
9 § 226.

10
11 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
12 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
13 the wages are paid not more than seven (7) calendar days following the close of the payroll
14 period. Cal. Lab. Code § 210 provides:

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

22 16. DEFENDANT from time to time failed to pay PLAINTIFFS and members of
23 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
24 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
25 the “Hourly” regular wage payments.

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

1 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA
2 CLASS Members at their base rates of pay.

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

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

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

20 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
21 to collect or receive from an employee any part of wages theretofore paid by said employer
22 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and
23 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
24 compensation payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
25 Members, failed to disclose all aspects of the deductions from compensation payable to
26 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to
27 pay these employees all wages due at each applicable pay period and upon termination.
28 PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of

1 all illegal deductions from wages according to proof, related penalties, interest, attorney fees
2 and costs.

3 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
4 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
5 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct
6 consequence of discharging their duties on behalf of DEFENDANT. Under California
7 Labor Code Section 2802, employers are required to indemnify employees for all expenses
8 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
9 states that "an employer shall indemnify his or her employee for all necessary expenditures
10 or losses incurred by the employee in direct consequence of the discharge of his or her
11 duties, or of his or her obedience to the directions of the employer, even though unlawful,
12 unless the employee, at the time of obeying the directions, believed them to be unlawful." For
13 PLAINTIFF and other class members to maintain their positions, they had to personally pay for
14 several certifications including CPR training, RBT certification, and an RBT test. Despite the
15 necessity of these certifications, Defendants did not reimburse PLAINTIFF for their application and
16 testing costs. Further, Defendants' failure to properly process PLAINTIFFS' RBT renewal
17 applications in time led to PLAINTIFFS incurring an additional application fee beyond original
18 expectation. PLAINTIFFS believe and alleges that other class members likewise incurred work-
19 related costs without reimbursement.

20 23. In the course of their employment PLAINTIFFS and other CALIFORNIA
21 CLASS Members as a business expense, were required by DEFENDANT to use their own
22 personal cellular phones as a result of and in furtherance of their job duties as employees for
23 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
24 associated with the use of their personal cellular phones for DEFENDANT's benefit.
25 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
26 DEFENDANT to use their personal cellular phones. As a result, in the course of their
27 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
28 CLASS incurred unreimbursed business expenses which included, but were not limited to,

1 costs related to the use of their personal cellular phones all on behalf of and for the benefit
2 of DEFENDANT.

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

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

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

22 27. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the
23 legally required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable
24 Wage Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime
25 wages due to PLAINTIFFS. DEFENDANT did not have a policy or practice which
26 provided timely off-duty meal and rest breaks to PLAINTIFFS and also failed to compensate
27 PLAINTIFFS for PLAINTIFFS missed meal and rest breaks. The nature of the work
28 performed by the PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of
PLAINTIFFS' duties for the legally required off-duty meal periods. PLAINTIFFS and class

1 members often had to work through portions of uncompensated meal periods due to teacher
2 scheduling and lack of adult supervision for the client. Due to the sensitive nature of work with
3 children and Defendants' failure to implement systems where PLAINTIFFS and class members
4 could take compliant breaks, PLAINTIFF and class members were often unable to take their full,
5 uninterrupted, meal and rest periods in a timely manner. As a result, DEFENDANT's failure to
6 provide PLAINTIFFS with the legally required meal periods is evidenced by
7 DEFENDANT's business records. The amount in controversy for PLAINTIFFS
8 individually does not exceed the sum or value of \$75,000.

9 10 **JURISDICTION AND VENUE**

11
12 28. This Court has jurisdiction over this Action pursuant to California Code of
13 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
14 17203. This action is brought as a Class Action on behalf of PLAINTIFFS and similarly
15 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

22 **THE CALIFORNIA CLASS**

23
24 30. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
25 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
26 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
27 California class, defined as all individuals who are or previously were employed by
28 DEFENDANT who were classified as non-exempt in the State of California (the

1 “CALIFORNIA CLASS”) from January 1, 2022 to the earlier of preliminary approval or
2 November 5, 2024 (the “CALIFORNIA CLASS PERIOD”), except any named plaintiff in
3 the matter *Allen v. ACES 2020 I, LLC et al.*, Superior Court for the County of Contra Costa,
4 Case No. C23-00916. The amount in controversy for the aggregate claim of CALIFORNIA
5 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

24 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
25 CLASS Members is impracticable.

26 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under
27 California law by:
28

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

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

- 13 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
14 that the joinder of all such persons is impracticable and the disposition
15 of their claims as a class will benefit the parties and the Court;
16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
17 issues that are raised in this Complaint are common to the
18 CALIFORNIA CLASS will apply to every member of the
19 CALIFORNIA CLASS;
20 (c) The claims of the representative PLAINTIFFS are typical of the claims
21 of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all
22 the other members of the CALIFORNIA CLASS, was classified as a
23 non-exempt employee paid on an hourly basis who was subjected to the
24 DEFENDANT's deceptive practice and policy which failed to provide
25 the legally required meal and rest periods to the CALIFORNIA CLASS
26 and thereby underpaid compensation to PLAINTIFFS and
27 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
28 result of DEFENDANT's employment practices. PLAINTIFFS and the
members of the CALIFORNIA CLASS were and are similarly or

1 identically harmed by the same unlawful, deceptive and unfair
2 misconduct engaged in by DEFENDANT; and,

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

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

- 13 (a) Without class certification and determination of declaratory, injunctive,
14 statutory and other legal questions within the class format, prosecution
15 of separate actions by individual members of the CALIFORNIA
16 CLASS will create the risk of:

- 17 1) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA CLASS which would establish
19 incompatible standards of conduct for the parties opposing the
20 CALIFORNIA CLASS; and/or,
21 2) Adjudication with respect to individual members of the
22 CALIFORNIA CLASS which would as a practical matter be
23 dispositive of interests of the other members not party to the
24 adjudication or substantially impair or impede their ability to
25 protect their interests.

- 26 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
27 to act on grounds generally applicable to the CALIFORNIA CLASS,
28 making appropriate class-wide relief with respect to the CALIFORNIA

1 CLASS as a whole in that DEFENDANT failed to pay all wages due to
2 members of the CALIFORNIA CLASS as required by law;

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

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

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

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

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

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

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

13 4) A class action is superior to other available methods for the fair
14 and efficient adjudication of this litigation because class
15 treatment will obviate the need for unduly and unnecessary
16 duplicative litigation that is likely to result in the absence of
17 certification of this action pursuant to Cal. Code of Civ. Proc. §
18 382.

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

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

25 (b) A Class Action is superior to any other available method for the fair
26 and efficient adjudication of the claims of the members of the
27 CALIFORNIA CLASS because in the context of employment litigation
28 a substantial number of individual CALIFORNIA CLASS Members

1 will avoid asserting their rights individually out of fear of retaliation or
2 adverse impact on their employment;

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

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

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

14 (f) There is a community of interest in ensuring that the combined assets of
15 DEFENDANT are sufficient to adequately compensate the members of
16 the CALIFORNIA CLASS for the injuries sustained;

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

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

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

27 39. DEFENDANT maintains records from which the Court can ascertain and
28 identify by job title each of DEFENDANT's employees who have been intentionally

1 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
2 PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of
3 similarly situated employees when they have been identified.

4 **THE CALIFORNIA LABOR SUB-CLASS**

5 40. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
6 Eighth, Ninth, and TENTH causes Action on behalf of a California sub-class, defined as all
7 members of the CALIFORNIA CLASS who are or previously were employed by
8 DEFENDANT who were classified as non-exempt in the State of California (the
9 "CALIFORNIA LABOR SUB-CLASS") from January 1, 2022 to the earlier of preliminary
10 approval or November 5, 2024 (the "CALIFORNIA LABOR SUB-CLASS PERIOD"),
11 except any named plaintiff in the matter *Allen v. ACES 2020 I, LLC et al.*, Superior Court
12 for the County of Contra Costa, Case No. C23-00916, pursuant to Cal. Code of Civ. Proc. §
13 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
14 CLASS Members is under five million dollars (\$5,000,000.00).

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

27 42. DEFENDANT maintains records from which the Court can ascertain and
28

1 identify by name and job title, each of DEFENDANT's employees who have been
2 intentionally subjected to DEFENDANT's company policy, practices and procedures as
3 herein alleged. PLAINTIFFS will seek leave to amend the complaint to include any
4 additional job titles of similarly situated employees when they have been identified.

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

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

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

22 45. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
23 CLASS under California law by:

- 24 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
25 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
26 CLASS all wages due for overtime worked, for which DEFENDANT is
27 liable pursuant to Cal. Lab. Code § 1194;
- 28

- 1 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
2 accurately pay PLAINTIFFS and the members of the CALIFORNIA
3 LABOR SUB-CLASS the correct minimum wage pay for which
4 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
5 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
6 the members of the CALIFORNIA LABOR SUB-CLASS with an
7 accurate itemized statement in writing showing the corresponding
8 correct amount of wages earned by the employee;
9 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFFS and the other members of the CALIFORNIA LABOR
11 SUB-CLASS with all legally required off-duty, uninterrupted thirty
12 (30) minute meal breaks and the legally required off-duty rest breaks;
13 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
14 when an employee is discharged or quits from employment, the
15 employer must pay the employee all wages due without abatement, by
16 failing to tender full payment and/or restitution of wages owed or in the
17 manner required by California law to the members of the
18 CALIFORNIA LABOR SUB-CLASS who have terminated their
19 employment; and,
20 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
21 and the CALIFORNIA LABOR SUB-CLASS members with necessary
22 expenses incurred in the discharge of their job duties.

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

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

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

26 47. In addition to meeting the statutory prerequisites to a Class Action, this action
27 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:
28

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution
3 of separate actions by individual members of the CALIFORNIA
4 LABOR SUB-CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which
7 would establish incompatible standards of conduct for the
8 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
9 2) Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a
11 practical matter be dispositive of interests of the other members
12 not party to the adjudication or substantially impair or impede
13 their ability to protect their interests.
- 14 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
15 acted or refused to act on grounds generally applicable to the
16 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
17 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
18 whole in that DEFENDANT fails to pay all wages due. Including the
19 correct wages for all time worked by the members of the
20 CALIFORNIA LABOR SUB-CLASS as required by law;
- 21 (c) Common questions of law and fact predominate as to the members of
22 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
23 and violations of California Law as listed above, and predominate over
24 any question affecting only individual CALIFORNIA LABOR SUB-
25 CLASS Members, and a Class Action is superior to other available
26 methods for the fair and efficient adjudication of the controversy,
27 including consideration of:
28

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

1 treatment will obviate the need for unduly and unnecessary
2 duplicative litigation that is likely to result in the absence of
3 certification of this action pursuant to Cal. Code of Civ. Proc. §
4 382.

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

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

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

17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

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

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

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

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

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

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

3 Any person who engages, has engaged, or proposes to engage in unfair
4 competition may be enjoined in any court of competent jurisdiction. The court
5 may make such orders or judgments, including the appointment of a receiver,
6 as may be necessary to prevent the use or employment by any person of any
7 practice which constitutes unfair competition, as defined in this chapter, or as
8 may be necessary to restore to any person in interest any money or property,
9 real or personal, which may have been acquired by means of such unfair
10 competition.

11 Cal. Bus. & Prof. Code § 17203.

12 52. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Industrial Wage Order(s), the California Code of Regulations and the California
15 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
16 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
17 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
18 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
19 held to constitute unfair competition, including restitution of wages wrongfully withheld.

20 53. By the conduct alleged herein, DEFENDANT's practices were unlawful and
21 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
22 unscrupulous or substantially injurious to employees, and were without valid justification or
23 utility for which this Court should issue equitable and injunctive relief pursuant to Section
24 17203 of the California Business & Professions Code, including restitution of wages
25 wrongfully withheld.

26 54. By the conduct alleged herein, DEFENDANT's practices were deceptive and
27 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
28 meal and rest periods, the required amount of compensation for missed meal and rest

1 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
2 reimburse all necessary business expenses incurred, and failed to provide Fair Labor
3 Standards Act overtime wages due for overtime worked as a result of failing to include non-
4 discretionary incentive compensation into their regular rates of pay for purposes of
5 computing the proper overtime pay due to a business practice that cannot be justified,
6 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
7 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
8 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
9 restitution of wages wrongfully withheld.

10 55. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
11 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS
12 and the other members of the CALIFORNIA CLASS to be underpaid during their
13 employment with DEFENDANT.

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

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

23 58. PLAINTIFFS further demand on behalf of themselves and each member of the
24 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
25 duty paid rest period was not timely provided as required by law.

26 59. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and
28 the other members of the CALIFORNIA CLASS, including earned wages for all time

1 worked, and has deprived them of valuable rights and benefits guaranteed by law and
2 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
3 allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

10 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS are
11 entitled to, and do, seek such relief as may be necessary to restore to them the money and
12 property which DEFENDANT has acquired, or of which PLAINTIFFS and the other
13 members of the CALIFORNIA CLASS have been deprived, by means of the above
14 described unlawful and unfair business practices, including earned but unpaid wages for all
15 time worked.

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

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

27 **SECOND CAUSE OF ACTION**
28

For Failure To Pay Minimum Wages
[Cal. Lab. Code §§ 1194, 1194.2, 1197 and 1197.1]
(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)

64. PLAINTIFFS, 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.

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

66. 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.

67. 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 less wage than the minimum so fixed is unlawful.

68. 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.

69. DEFENDANT maintained a wage practice of paying PLAINTIFFS 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 policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS.

70. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that denies accurate compensation to PLAINTIFFS and

1 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
2 wage pay.

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

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

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

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

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

1 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
2 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
3 wages for their time worked.

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

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

24 **THIRD CAUSE OF ACTION**

25 **For Failure To Pay Overtime Compensation**

26 **[Cal. Lab. Code § 510 and 1194]**

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

1 78. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
2 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
3 paragraphs of this Complaint.

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

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

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

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

21 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
22 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
23 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
24 including overtime work.

25 84. DEFENDANT's unlawful wage and hour practices manifested, without
26 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
27 implementing a policy and practice that failed to accurately record overtime worked by
28 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied

1 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
2 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in
3 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty
4 (40) hours in any workweek.

5 85. In committing these violations of the California Labor Code, DEFENDANT
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
7 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
8 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
9 violation of the California Labor Code, the Industrial Welfare Commission requirements
10 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
11 wage practices as alleged herein, the PLAINTIFFS and the other members of the
12 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
13 worked.

14 86. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
15 from the overtime requirements of the law. None of these exemptions are applicable to the
16 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not
18 subject to a valid collective bargaining agreement that would preclude the causes of action
19 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of
20 herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
21 of non-negotiable, non-waiveable rights provided by the State of California.

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

25 88. DEFENDANT failed to accurately pay the PLAINTIFFS and the other
26 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
27 worked which was in excess of the maximum hours permissible by law as required by Cal.
28 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFFS and the other members of the

1 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
2 as to which DEFENDANT failed to accurately record and pay as evidenced by
3 DEFENDANT's business records and witnessed by employees.

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

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

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

25 92. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all overtime wages, according to proof, interest,
27 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
28 in a sum as provided by the California Labor Code and/or other applicable statutes. To the

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

9
10 **FOURTH CAUSE OF ACTION**

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

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

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

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

18 94. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
19 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
20 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
21 and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA
22 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
23 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
24 work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members
25 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
26 Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA
27 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
28 hour of work is evidenced by DEFENDANT's business records from time to time. Further,

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

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

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

16 **FIFTH CAUSE OF ACTION**

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

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

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

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

24 98. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
25 from time to time required to work in excess of four (4) hours without being provided ten
26 (10) minute rest periods. Further, these employees from time to time were denied their first
27 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
28 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of

1 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
2 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

3 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not
4 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
5 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically
6 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

16 **SIXTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 226]**

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

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

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

26 (1) gross wages earned,
27
28

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

18 103. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
19 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
20 wage statements which failed to show, among other things, the correct gross and net wages
21 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
22 employees with an accurate itemized wage statement in writing showing, among other
23 things, gross wages earned and all applicable hourly rates in effect during the pay period and
24 the corresponding amount of time worked at each hourly rate. PLAINTIFFS and
25 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
26 wage statements should reflect all applicable hourly rates during the pay period and the total
27 hours worked, and the applicable pay period in which the wages were earned pursuant to
28 California Labor Code Section 226(a). The wage statements DEFENDANT provided to

1 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
2 such information. More specifically, the wage statements failed to identify the accurate total
3 hours worked each pay period. When the hours shown on the wage statements were added
4 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
5 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
6 DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
7 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
8 to time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
9 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

22 **SEVENTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 2802]**

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

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

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

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

10 107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
11 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
12 CLASS members for required expenses incurred in the discharge of their job duties for
13 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
14 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
15 limited to, costs related to using their personal cellular phones on behalf of and for the
16 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
17 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
18 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
19 and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
20 CLASS members for expenses resulting from using their personal cellular phones and home
21 offices for DEFENDANT within the course and scope of their employment for
22 DEFENDANT. These expenses were necessary to complete their principal job duties.
23 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
24 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS
25 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
26 and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
27 these expenses as an employer is required to do under the laws and regulations of California.
28

1 108. PLAINTIFFS therefore demands reimbursement for expenditures or losses
2 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
3 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
4 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

5
6 **EIGHTH CAUSE OF ACTION**

7 **For Failure to Pay Sick Pay Wages**

8 **[Cal. Lab. Code §§ 200-203, 210, 218, 233, 246 *et seq.*]**

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

10 **and Against All Defendants)**

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

14 110. Cal Lab. Code § 233 provides that an employer must permit an employee to
15 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
16 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
17 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
18 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
19 right to sick pay wages, which an employer must calculate and compensate based on one of
20 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
21 same manner as the regular rate of pay for the workweek in which the employee uses paid
22 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
23 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
24 total wages, not including overtime premium pay, by the employee's total hours worked in
25 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
26 233, employees may sue to recover underpaid sick pay wages as damages.

27 111. As a matter of policy and practice, DEFENDANT pays sick pay wages to
28

1 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the
2 incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-
3 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
4 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
5 wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS
6 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
7 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
8 employee's total wages, not including overtime premium pay, by the employee's total hours
9 worked in the full pay periods of the prior 90 days of employment. As a result,
10 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
11 CALIFORNIA LABOR-SUB-CLASS.

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

27 113. As alleged herein and as a matter of policy and practice, DEFENDANT
28

1 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
2 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
3 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 210, 233, and 246,
4 among other Labor Code provisions. PLAINTIFFS are informed and believes that
5 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
6 mandates of the Labor Code as it relates to PLAINTIFFS' allegations, especially since the
7 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
8 include those benefits to which an employee is entitled as a part of his or her compensation,
9 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
10 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
11 willfully fails to timely pay PLAINTIFFS and the other members of the CALIFORNIA
12 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
13 penalties.

14 114. Furthermore, to the extent the paid sick leave paid constitutes Covid-related
15 paid sick leave, DEFENDANT knowingly and intentionally failed in their affirmative
16 obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct
17 rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 et seq.

18 115. Pursuant to Labor Code section 248.1, DEFENDANT was required to provide up to
19 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020
20 to December 31, 2020. Labor Code section 248.2 required DEFENDANT to provide up to 80 hours
21 of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
22 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
23 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
24 January 1, 2022 to September 30, 2022, and may be extended thereafter.

25 116. Under Labor Code section 248.1, employees must be paid for Covid-19
26 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last
27 pay period, (2) state minimum wage, (3) local minimum wage.
28

1 117. Under Labor Code section 248.2, non-exempt employees must be paid
2 supplemental paid sick leave according to the highest of the following four methods:

3 (I) Calculated in the same manner as the regular rate of pay for the workweek
4 in which the covered employee uses COVID-19 supplemental paid sick leave, whether or
5 not the employee uses COVID-10 supplemental paid sick leave, whether or not the
6 employee actually works overtime in that workweek.

7 (II) Calculated by dividing the covered employee's total wages, not including
8 overtime premium pay, by employee's total hours worked in the full pay periods of the prior
9 90 days of employment.

10 (III) The state minimum wage.

11 (IV) The local minimum wage to which the covered employee is entitled.

12 118. Labor Code section 248.6 requires employers to pay supplemental sick leave using
13 either method (I) or (II), as identified above.

14 119. On information and belief, DEFENDANT failed to pay Covid-19 Supplemental Sick
15 Leave in the manner described above because Defendants failed to include in their sick leave
16 calculation the additional remuneration received by class members.

17 120. Such a pattern, practice, and uniform administration of corporate policy is
18 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA
19 LABOR-SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable
20 penalties, attorney's fees, and costs of suit.

21 **NINTH CAUSE OF ACTION**

22 **For Untimely Payment of Wages**

23 **[Cal. Lab. Code §§ 204, 210, 218]**

24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**
25 **and Against All Defendants)**
26
27
28

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

122. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

123. DEFENDANT willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by PLAINTIFFS and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

124. PLAINTIFFS and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

TENTH CAUSE OF ACTION

For Waiting Time Penalties

[Cal. Lab. Code §§ 201, *et seq.*]

(By PLAINTIFFS and Against All Defendants)

125. All outside paragraphs of this Complaint are incorporated into this section.

1 126. This cause of action is brought by a waiting time subclass pursuant to Labor Code
2 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
3 employment, and which further provide a private right of action to recover statutory waiting time
4 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
5 wages.

6 127. DEFENDANT willfully failed and continue to fail in their affirmative obligation to
7 pay all wages earned and unpaid to PLAINTIFFS and class members immediately upon termination
8 of employment or within 72 hours thereafter for employees who did not provide at least 72 hours
9 prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter
10 in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

11 128. PLAINTIFFS and class members are entitled to recover a waiting time penalty for
12 a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by
13 law.

14
15 **ELEVENTH CAUSE OF ACTION**
16 **For Violation of the Private Attorneys General Act**
17 **[Cal. Lab. Code §§ 2698, *et seq.*]**
18 **(By PLAINTIFFS and Against All Defendants)**

19 129. PLAINTIFFS reallege and incorporates by this reference, as though fully set
20 forth herein, the prior paragraphs of this Complaint.

21 130. PAGA is a mechanism by which the State of California itself can enforce state
22 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
23 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
24 fundamentally a law enforcement action designed to protect the public and not to benefit private
25 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
26 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
27 PAGA, the California Legislature specified that "it was ... in the public interest to allow
28 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor

1 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
2 arbitration.

3 131. PLAINTIFFS, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, bring this Representative Action on behalf of the State of California with respect to
6 themselves and all non exempt employees who worked for DEFENDANT in the State of
7 California ("AGGRIEVED EMPLOYEES") from February 15, 2022 to the earlier of
8 preliminary approval or November 5, 2024 (the "PAGA PERIOD").

9 132. On October 9, 2023, Plaintiff Daniela Arbelaez Acevedo gave written notice by
10 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
11 certified mail to the employer of the specific provisions of this code alleged to have been
12 violated as required by Labor Code § 2699.3. On October 17, 2023, Plaintiff Myrella Thomas
13 gave written timely notice by certified mail to the Agency and the employer of the specific
14 provisions of the California Labor Code alleged to have been violated as required by Lab. Code
15 § 2699.3. The statutory waiting period for PLAINTIFFS to add these allegations to the
16 Complaint has expired and PLAINTIFFS did not receive a response from the Agency. As a
17 result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil
18 action under PAGA pursuant to Section 2699 as the proxy of the State of California with
19 respect to all AGGRIEVED EMPLOYEES as herein defined.

20 133. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
22 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
23 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
24 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
25 expenses, (f) failed to provide wages when due, and (g) failed to provide suitable seating, all
26 in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
27 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1174, 1194, 1197,
28 1197.1, 1198, 2800, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision

1 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide
2 Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result
3 of such conduct.¹ PLAINTIFFS hereby seeks recovery of only civil penalties as prescribed by
4 the Labor Code Private Attorney General Act of 2004 as the representative of the State of
5 California for the illegal conduct perpetrated on PLAINTIFFS and the AGGRIEVED
6 EMPLOYEES.

7 134. All of the conduct and violations alleged herein occurred during the PAGA
8 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
9 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
10 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal.
11 App. 5th 504 (2018).

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly
15 and severally, as follows:

16 1. On behalf of the CALIFORNIA CLASS:

- 17 A) That the Court certify the First Cause of Action asserted by the
18 CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
19 Proc. § 382;
20 B) An order temporarily, preliminarily and permanently enjoining and
21 restraining DEFENDANT from engaging in similar unlawful conduct as
22 set forth herein;
23 C) An order requiring DEFENDANT to pay all wages and all sums
24 unlawfully withheld from compensation due to PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS; and,

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

1 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a
2 fluid fund for restitution of the sums incidental to DEFENDANT's
3 violations due to PLAINTIFFS and to the other members of the
4 CALIFORNIA CLASS.

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

6 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh,
7 Eighth and Ninth Causes of Action asserted by the CALIFORNIA
8 LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ.
9 Proc. § 382;

10 B) Compensatory damages, according to proof at trial, including
11 compensatory damages for minimum and overtime compensation due
12 PLAINTIFFS and the other members of the CALIFORNIA LABOR
13 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
14 PERIOD plus interest thereon at the statutory rate;

15 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
16 period in which a violation occurs and one hundred dollars (\$100) per
17 each member of the CALIFORNIA LABOR SUB-CLASS for each
18 violation in a subsequent pay period, not exceeding an aggregate penalty
19 of four thousand dollars (\$4,000), and an award of costs for violation of
20 Cal. Lab. Code § 226;

21 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
22 512 and the applicable IWC Wage Order;

23 E) For liquidated damages pursuant to California Labor Code Sections
24 1194.2 and 1197;

25 F) The amount of the expenses PLAINTIFFS and each member of the
26 CALIFORNIA LABOR SUBCLASS incurred in the course of their job
27 duties, plus interest, and costs of suit.; and,
28

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

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

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

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

11 4. On all claims:

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

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

14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under
15 the law, including, but not limited to, pursuant to Labor Code §221, §226,
16 §1194, and/or §2802.

17 Dated: September 30, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

21 By: /s/ Nicholas J. De Blouw

22 Norman B. Blumenthal

23 Nicholas J. De Blouw

24 *Attorneys for Plaintiff*

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Dated: September 30, 2024

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