

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

BUTLER AMERICA, LLC, a Limited Liability Company; and Does 1 through 50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ROMAN PEREZ, an individual, on behalf of himself, and on behalf of all persons similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

MAY 27 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By Steven Drew, Deputy
Steven Drew

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Stanley Mosk Courthouse

111 N. Hill St., Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Norman Blumenthal (Bar # 68687)

Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara, La Jolla, CA 92037

DATE:

(Fecha)

MAY 27 2020

Sherri R. Carter, Clerk

Clerk, by

(Secretario)

STEVEN OREW

, Deputy

(Adjunto)

CASE NUMBER:
(Número del Caso):

20STCV20218

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation)

CCP 416.20 (defunct corporation)

CCP 416.40 (association or partnership)

other (specify):

CCP 416.60 (minor)

CCP 416.70 (conservatee)

CCP 416.90 (authorized person)

4. by personal delivery on (date):

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
Norman B. Blumenthal (State Bar #068687)
2 Kyle R. Nordrehaug (State Bar #205975)
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ORIGINAL FILED**
Superior Court of California
County of Los Angeles

MAY 27 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By , Deputy
Steven Drew

6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 ROMAN PEREZ, an individual, on behalf
11 of himself, and on behalf of all persons
similarly situated,

12 Plaintiff,

13 vs.

14 BUTLER AMERICA, LLC, a Limited
15 Liability Company; and Does 1 through
50, Inclusive,

16 Defendants.

Case No. **20STCV20218**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

BY FAX

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

5 **THE PARTIES**

6 1. Defendant Butler America, LLC (“DEFENDANT”) is a limited liability
7 corporation and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business in the state of California.

9 2. DEFENDANT provides technical services. The Company offers engineering,
10 technology, aftermarket, and other related services to defense, energy, telecommunications, and
11 healthcare sectors.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from July of 2016 to July of 2019.
14 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-
15 exempt employee paid in whole or in part on an hourly basis and received additional
16 compensation from DEFENDANT in the form of non-discretionary incentive wages.

17 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
18 defined as all individuals who are or previously were employed by DEFENDANT in California
19 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
20 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
21 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
22 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
23 (\$5,000,000.00).

24 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
27 failed to lawfully compensate these employees for all their overtime worked. DEFENDANT’s
28

1 policy and practice alleged herein is an unlawful, unfair and deceptive business practice
2 whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
3 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
4 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
5 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
6 who have been economically injured by DEFENDANT's past and current unlawful conduct,
7 and all other appropriate legal and equitable relief.

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

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

25
26 **THE CONDUCT**

27 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
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1 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
2 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
3 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
4 all time worked, meaning the time during which an employee was subject to the control of an
5 employer, including all the time the employee was permitted or suffered to permit this work.
6 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the
7 clock without paying them for all the time they were under DEFENDANT's control. As a result
8 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were
9 from time to time not fully relieved of duty by DEFENDANT for their meal periods and would
10 clock out of DEFENDANT's timekeeping system but continue to work at DEFENDANT's
11 direction during what should have been their off-duty meal period. Additionally, DEFENDANT
12 required these employees to work off the clock without paying them for all the time they were
13 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF and other
14 CALIFORNIA CLASS Members to drive their work vehicles back to DEFENDANT's office,
15 as this was the only feasible way to travel to various work sites assigned by DEFENDANT.
16 DEFENDANT failed to pay PLAINTIFF and CALIFORNIA CLASS Members for all of their
17 time they spent traveling on DEFENDANT's behalf from their last work assignment of their
18 shift to DEFENDANT's office to drop off their work vehicles. Also, from time to time
19 PLAINTIFF and other CALIFORNIA CLASS Members were required to respond to
20 DEFENDANT while off the clock at their homes after their work shift had ended via their cell
21 phones for work related requests, including but not limited, scope of work order and issues.
22 As such, DEFENDANT knew or should have known that PLAINTIFF and the other members
23 of the CALIFORNIA CLASS were under compensated for all time worked. As a result,
24 PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by working
25 without their time being accurately recorded and without compensation at the applicable
26 minimum wage and overtime wage rates. To the extent that the time worked off the clock did
27 not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for
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1 the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1. As
2 a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wages and
3 overtime wage compensation by working without their time being correctly recorded and
4 without compensation at the applicable rates. DEFENDANT’s policy and practice not to pay
5 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
6 DEFENDANT’s business records.

7 9. In addition, when DEFENDANT required PLAINTIFF and other CALIFORNIA
8 CLASS Members to engage in additional work after their shift ended, this resulted in a second
9 reporting for work in a single workday. In such a circumstance of a second reporting for work
10 in a single workday, DEFENDANT failed to pay these employees reporting time pay as required
11 by Cal. Code Regs., tit. 8, § 11040. Subdivision 5(B) states: “If an employee is required to
12 report for work a second time in any one workday and is furnished less than two (2) hours of
13 work on the second reporting, said employee shall be paid for two (2) hours at the employee’s
14 regular rate of pay, which shall not be less than the minimum wage.” Cal. Code Regs., tit. 8, §
15 11040, subd. 5(B).

16 10. State law provides that employees must be paid overtime at one-and-one-half
17 times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
18 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
19 employee’s performance.

20 11. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
21 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
22 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
23 performance for DEFENDANT. The non-discretionary incentive program provided all
24 employees paid on an hourly basis with incentive compensation when the employees met the
25 various performance goals set by DEFENDANT. However, when calculating the regular rate
26 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
27 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular
28

1 rate of pay” for purposes of calculating overtime pay. Management and supervisors described
2 the incentive program to potential and new employees as part of the compensation package. As
3 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
4 CLASS Members must be included in the “regular rate of pay.” The failure to do so has
5 resulted in an underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
6 CLASS Members by DEFENDANT.

7 12. In violation of the applicable sections of the California Labor Code and the
8 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
9 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
10 CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This policy and
11 practice of DEFENDANT is intended to purposefully avoid the payment of the correct overtime
12 compensation as required by California law which allowed DEFENDANT to illegally profit and
13 gain an unfair advantage over competitors who complied with the law. To the extent equitable
14 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the
15 CALIFORNIA CLASS PERIOD should be adjusted accordingly.

16 13. As a result of their rigorous work schedules, PLAINTIFF and other
17 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
18 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
19 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT,
20 from time to time, for more than five (5) hours during a shift without receiving an off-duty meal
21 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
22 Members with a second off-duty meal period from time to time in which these employees were
23 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other
24 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
25 compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

26 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also from time to time required to work in excess of four
28

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

21 15. 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 things,
23 gross wages earned and all applicable hourly rates in effect during the pay period and the
24 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
25 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
26 gross wages earned. Aside from the violations listed above, DEFENDANT failed to issue to
27 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
28

1 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
2 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
3 Code § 226.

4 16. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA
5 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
6 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by
7 engaging in a company-wide policy and procedure which failed to accurately calculate and
8 record the correct overtime rate for the overtime worked by PLAINTIFF and other
9 CALIFORNIA CLASS Members. The proper calculation of these employees’ overtime hour
10 rates is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of
11 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
12 required overtime compensation for work performed by the members of the CALIFORNIA
13 CLASS and violated the California Labor Code and regulations promulgated thereunder as
14 herein alleged.

15 17. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to
16 him in the form of two components. One component of PLAINTIFF’s compensation was a
17 base hourly wage. The second component of PLAINTIFF’s compensation was non-
18 discretionary incentive wages as described above. DEFENDANT paid the incentive wages, so
19 long as PLAINTIFF met certain predefined performance requirements. PLAINTIFF met
20 DEFENDANT’s predefined eligibility performance requirements in various pay periods
21 throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF the
22 incentive wages. During these pay periods in which PLAINTIFF was paid the non-
23 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for
24 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF’s
25 regular rate of pay for the purposes of calculating what should have been PLAINTIFF’s
26 accurate overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout his
27 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
28

1 constituted wages within the meaning of the California Labor Code and thereby should have
2 been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to time
3 unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal
4 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than
5 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
6 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which
7 he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore
8 forfeited meal and rest breaks without additional compensation and in accordance with
9 DEFENDANT's strict corporate policy and practice. DEFENDANT also provided
10 PLAINTIFF with a pay stub that failed to comply with all the requirements set forth in Cal. Lab.
11 Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the wages still owed to
12 him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
13 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

14
15 **JURISDICTION AND VENUE**

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

20 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because PLAINTIFF worked and resided in this County for
22 DEFENDANT, and DEFENDANT (i) currently maintains and at all relevant times maintained
23 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
24 committed the wrongful conduct herein alleged in this County against members of the
25 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

26
27 **THE CALIFORNIA CLASS**

28 20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive

1 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
2 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
3 all individuals who are or previously were employed by DEFENDANT in California and
4 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
5 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
6 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
7 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
8 (\$5,000,000.00).

9 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA
10 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
11 accordingly.

12 22. The California Legislature has commanded that "all wages... ..earned by any
13 person in any employment are due and payable twice during each calendar month, on days
14 designated in advance by the employer as the regular paydays", and further that "[a]ny work
15 in excess of eight hours in one workday and any work in excess of 40 hours in any one
16 workweek . . . shall be compensated at the rate of no less than one and one-half times the
17 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare
18 Commission (IWC), however, is statutorily authorized to "establish exemptions from the
19 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
20 professional employees, provided [inter alia] that the employee is primarily engaged in duties
21 that meet the test of the exemption, [and] customarily and regularly exercises discretion and
22 independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither the
23 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
24 LABOR SUB-CLASS qualify for exemption from the above requirements.

25 23. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
26 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
27 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
28

1 to correctly calculate and record minimum wage and overtime compensation for overtime
2 worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
4 permitted or suffered to permit this work.

5 24. DEFENDANT has the legal burden to establish that each and every
6 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
7 accurately calculate the “regular rate of pay” by including the incentive compensation that
8 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
9 DEFENDANT, however, failed to have in place during the CALIFORNIA CLASS PERIOD
10 and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA
11 CLASS Member is paid the applicable overtime rate for all overtime worked, so as to satisfy
12 their burden. This common business practice applicable to each and every CALIFORNIA
13 CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive
14 under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages,
15 and reliance are not elements of this claim.

16 25. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
17 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
18 employee for all overtime worked at the applicable rate, as required by California Labor Code
19 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
20 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
21 as to include all earnings in the overtime compensation calculation as required by California
22 Labor Code §§ 510, *et seq.*

23 26. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

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

- 27 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
28

1 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
2 place company policies, practices and procedures that failed to pay all
3 minimum and overtime wages due the CALIFORNIA CLASS for all time
4 worked, and failed to accurately record the applicable rates of all overtime
5 worked by the CALIFORNIA CLASS;

6 (b) Committing an act of unfair competition in violation of the California
7 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
8 unlawfully, unfairly, and/or deceptively having in place a company policy,
9 practice and procedure that failed to correctly calculate overtime
10 compensation due to PLAINTIFF and the members of the CALIFORNIA
11 CLASS;

12 (c) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
14 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
15 the CALIFORNIA CLASS members; and,

16 (d) Committing an act of unfair competition in violation of the California
17 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
18 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
19 *seq.*, by failing to pay the correct federal overtime wages to the
20 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
21 required by the FLSA, and retaining the unpaid federal overtime to the
22 benefit of DEFENDANT.

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

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

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

26 29. 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:
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(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

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

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

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

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

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

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

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

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

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

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

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices are applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and

1 equitable relief for the acts of unfair competition, statutory violations and
2 other improprieties, and in obtaining adequate compensation for the
3 damages and injuries which DEFENDANT's actions have inflicted upon
4 the CALIFORNIA CLASS;

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

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

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

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

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

22
23 **THE CALIFORNIA LABOR SUB-CLASS**

24 32. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
25 Causes of Action on behalf of a California sub-class, defined as all members of the
26 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
27 SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint
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1 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
2 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
3 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
4 (\$5,000,000.00).

5 33. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
6 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
7 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
8 to correctly calculate overtime compensation for the overtime worked by PLAINTIFF and the
9 other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT
10 enjoyed the benefit of this work, required employees to perform this work and permitted or
11 suffered to permit this overtime work. DEFENDANT has denied these CALIFORNIA LABOR
12 SUB-CLASS Members overtime wages at the correct amount to which these employees are
13 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
14 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
15 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
16 accordingly.

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

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

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

- 26 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
27 overtime compensation to members of the CALIFORNIA LABOR SUB-
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- CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to overtime compensation for overtime worked under the overtime pay requirements of California law;
- (c) Whether DEFENDANT failed to accurately record the applicable overtime rates for all overtime worked PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS;
- (d) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- (e) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (f) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (g) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (h) Whether DEFENDANT’s conduct was willful.

37. DEFENDANT failed to accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the applicable overtime rates for the overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT according to company procedures as alleged herein above. This business practice was applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

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

3 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
4 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
5 CLASS the correct overtime pay for which DEFENDANT is liable
6 pursuant to Cal. Lab. Code § 1194 & § 1198;

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

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

15 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
16 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
17 itemized statement in writing showing all accurate and applicable
18 overtime rates in effect during the pay period and the corresponding
19 amount of time worked at each overtime rate by the employee; and,

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

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

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

- 1) The interests of the members of the CALIFORNIA 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

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representative; and,

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

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

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

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the CALIFORNIA LABOR SUB-CLASS;

- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

1 44. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
2 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
3 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
4 competition as follows:

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

9 Cal. Bus. & Prof. Code § 17203.

10 45. By the conduct alleged herein, DEFENDANT has engaged and continues to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, and the Fair
14 Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, for which this Court should issue
15 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
16 necessary to prevent and remedy the conduct held to constitute unfair competition, including
17 restitution of wages wrongfully withheld.

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

24 47. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT failed to pay PLAINTIFF, and other members of the
26 CALIFORNIA CLASS, wages due for overtime worked, reporting time wages due, failed to
27 accurately to record the applicable rate of all overtime worked, and failed to provide the
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1 required amount of overtime compensation due to a miscalculation of the overtime rate that
2 cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
3 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
4 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
5 including restitution of wages wrongfully withheld.

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

10 49. By the conduct alleged herein, DEFENDANT's practices were also unfair and
11 deceptive in that DEFENDANT's policies, practices and procedures failed to provide
12 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

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

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

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

21
22 **SECOND CAUSE OF ACTION**

23 **For Failure To Pay Minimum Wages**

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

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

26 **and Against All Defendants)**

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

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

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

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

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

15 62. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
17 time they work, including time spent engaging in work tasks while off the clock. To the extent
18 that these off-the-clock job tasks do not qualify for overtime premium payment, DEFENDANT
19 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
20 §§ 1194, 1197, and 1197.1. As set forth herein, DEFENDANT's policy and practice was to
21 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

9 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
10 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
11 Members to work without paying them for all the time they were under DEFENDANT's
12 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
14 were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

19
20 **THIRD CAUSE OF ACTION**

21 **For Failure To Pay Overtime Compensation**

22 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

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

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

1 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANT’s willful and intentional violations of the California Labor
3 Code and the Industrial Welfare Commission requirements for DEFENDANT’s failure to
4 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
5 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT’s failure to properly
6 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
7 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
8 any workweek.

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

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

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

19 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
20 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
21 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
22 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFF and
23 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
24 amount of overtime worked and correct applicable overtime rate for the amount of overtime
25 they worked. As set forth herein, DEFENDANT’s policy and practice was to unlawfully and
26 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and
27 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact
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1 failed to pay these employees the correct applicable overtime wages for all overtime worked.

2 77. DEFENDANT's unlawful wage and hour practices manifested, without
3 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
4 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the
5 other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including,
6 the work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
7 workweek.

8 78. In committing these violations of the California Labor Code, DEFENDANT
9 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
10 consequently underpaid the actual time worked by PLAINTIFF and other members of the
11 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
12 payment of all earned wages, and other benefits in violation of the California Labor Code, the
13 Industrial Welfare Commission requirements and other applicable laws and regulations.

14 79. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
16 receive full compensation for all overtime worked.

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

25 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
26 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
27 they were entitled to, constituting a failure to pay all earned wages.

1 82. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
4 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
6 to accurately record and pay using the applicable overtime rate as evidenced by
7 DEFENDANT’s business records and witnessed by employees.

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

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

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

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time
2 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
3 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
4 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
5 by DEFENDANT's business records from time to time. As a result, PLAINTIFF and other
6 members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without
7 additional compensation and in accordance with DEFENDANT's strict corporate policy and
8 practice.

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

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

18
19 **FIFTH CAUSE OF ACTION**

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

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

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

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

27 92. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
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1 time to time required to work in excess of four (4) hours without being provided ten (10) minute
2 rest periods. Further, these employees from time to time were denied their first rest periods of
3 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
4 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
5 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
6 shifts worked of ten (10) hours or more. From time to time, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
8 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
9 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
10 periods by DEFENDANT and DEFENDANT's managers.

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

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

20
21 **SIXTH CAUSE OF ACTION**

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

23 **[Cal. Lab. Code § 226]**

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

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

1 of this Complaint.

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

4 (1) gross wages earned,

5 (2) total hours worked by the employee, except for any employee whose compensation
6 is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
8 Commission,

9 (3) the number of piecerate units earned and any applicable piece rate if the employee
10 is paid on a piece-rate basis,

11 (4) all deductions, provided that all deductions made on written orders of the employee
12 may be aggregated and shown as one item,

13 (5) net wages earned,

14 (6) the inclusive dates of the period for which the employee is paid,

15 (7) the name of the employee and his or her social security number, except that by
16 January 1, 2008, only the last four digits of his or her social security number or an
17 employee identification number other than a social security number may be shown on
18 the itemized statement,

19 (8) the name and address of the legal entity that is the employer, and

20 (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee.

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

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

16
17 **SEVENTH CAUSE OF ACTION**

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

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

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

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

25 100. Cal. Lab. Code § 200 provides that:

26 As used in this article:

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

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

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

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

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

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

14 104. Cal. Lab. Code § 203 provides:

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

18 105. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
19 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
20 employees who actually worked overtime, as required by law.

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- E) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,
- F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

3. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 226 and/or § 1194.

Dated: May 22, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP


By: 
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: May 22, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 

Norman B. Blumenthal
Attorneys for Plaintiff