

**SUMMONS
(CITACION JUDICIAL)**

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

ASENDIA USA, INC., a Corporation; and Does 1 through 50, Inclusive,

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

EDUARDO CINTO, 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

JUN 15 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

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) **JUN 15 2020**

Clerk, by

SHERRI R. CARTER (Secretario)

CASE NUMBER:
(Número del caso):

20STCV22863

Kristina Vargas

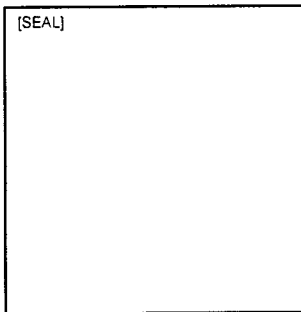
Deputy
(Adjunto)

(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 416.60 (minor)
 - CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 - CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 - other (specify):
- 4. by personal delivery on (date):



JUN 15 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
2 Norman B. Blumenthal (State Bar #068687)
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11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 EDUARDO CINTO, an individual, on
15 behalf of himself, and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 ASENDIA USA, INC., a Corporation; and
20 Does 1 through 50, Inclusive,

21 Defendants.

Case No. **20STCV22863**

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;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
9. FAILURE TO ISSUE WAGES BY INSTRUMENT PAYABLE ON DEMAND WITHOUT DISCOUNT IN VIOLATION OF CAL. LAB. CODE §§ 212; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

BY FAX

1 Plaintiff Eduardo Cinto (“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 Asendia USA, Inc. (“DEFENDANT”) is a Corporation and at all
7 relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business in the state of California.

9 2. DEFENDANT provides shipping and delivery services to its customers.
10 DEFENDANT was founded in 2012.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to overtime pay and meal and rest periods from August of 2015 to August of
13 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as
14 a non-exempt employee paid in whole or in part on an hourly basis and received additional
15 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

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

24
25 **THE CONDUCT**

26 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
27 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
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1 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
2 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
3 all time worked, meaning the time during which an employee was subject to the control of an
4 employer, including all the time the employee was permitted or suffered to permit this work.
5 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the
6 clock without paying them for all the time they were under DEFENDANT's control.
7 Specifically, PLAINTIFF and CALIFORNIA CLASS Members would clock out of
8 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT
9 as required to meet DEFENDANT's job requirements. During the CALIFORNIA CLASS
10 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to
11 perform work off the clock before clocking in and after clocking out, in that DEFENDANT, as
12 a condition of employment, required these employees to wait for and submit to loss prevention
13 inspections at the beginning and end of each scheduled shift for which DEFENDANT did not
14 provide compensation for time spent waiting for and submitting to DEFENDANT's loss
15 prevention inspections off the clock. Further, as a result of their rigorous work schedules and
16 DEFENDANT's loss prevention inspection policy, PLAINTIFF and other CALIFORNIA
17 LABOR SUB-CLASS Members were from time to time not fully relieved of duty by
18 DEFENDANT for their meal periods. As a result, PLAINTIFF and other CALIFORNIA
19 CLASS Members forfeited minimum wages and overtime wage compensation by working
20 without their time being correctly recorded and without compensation at the applicable rates.
21 DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
22 Members for all time worked, is evidenced by DEFENDANT's business records.

23 9. State law provides that employees must be paid overtime at one-and-one-half
24 times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
25 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
26 employee's performance.

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

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

23 12. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
25 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
26 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT,
27 from time to time, for more than five (5) hours during a shift without receiving an off-duty meal
28

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

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

26 14. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
27 her employees with an accurate itemized wage statement in writing showing, among other
28

1 things, gross wages earned and all applicable hourly rates in effect during the pay period and
2 the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT
3 violated Cal. Lab. Code § 226(a)(8) from time to time by failing to include both
4 DEFENDANT's name and address of its legal entity on the itemized wage statements of
5 PLAINTIFF and other members of the CALIFORNIA CLASS. From time to time,
6 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that
7 identified the correct gross wages earned. Aside from the violations listed above,
8 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
9 requirements under California Labor Code 226 *et seq.* As a result, from time to time
10 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS
11 with wage statements which violated Cal. Lab. Code § 226.

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

22 16. In the course of their employment PLAINTIFF and other CALIFORNIA
23 CLASS Members as a business expense, were required by DEFENDANT to use their own
24 personal cell phones as a result of and in furtherance of their job duties as employees for
25 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
26 associated with the use of their personal cell phones for DEFENDANT's benefit.
27 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
28

1 DEFENDANT to use their personal cell phones to for work related issues. As a result, in
2 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
3 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were
4 not limited to, costs related to the use of their personal cell phones all on behalf of and for
5 the benefit of DEFENDANT.

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

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

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

19 20 JURISDICTION AND VENUE

21 19. This Court has jurisdiction over this Action pursuant to California Code of
22 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
23 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
24 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

4
5 **THE CALIFORNIA CLASS**

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

15 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
16 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
17 accordingly.

18 23. The California Legislature has commanded that "all wages... ..earned by any
19 person in any employment are due and payable twice during each calendar month, on days
20 designated in advance by the employer as the regular paydays", and further that "[a]ny
21 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
22 workweek . . . shall be compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial
24 Welfare Commission (IWC), however, is statutorily authorized to "establish exemptions
25 from the requirement that an overtime rate of compensation be paid... ..for executive,
26 administrative, and professional employees, provided [inter alia] that the employee is
27 primarily engaged in duties that meet the test of the exemption, [and] customarily and
28 regularly exercises discretion and independent judgment in performing those duties..."

1 (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members of the CALIFORNIA
2 CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for exemption from the
3 above requirements.

4 24. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
5 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
6 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
7 failed to correctly calculate and record minimum wage and overtime compensation for
8 overtime worked by PLAINTIFF and the other members of the CALIFORNIA CLASS,
9 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
10 this work and permitted or suffered to permit this work.

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

22 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation
23 for any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
24 employee for all overtime worked at the applicable rate, as required by California Labor
25 Code §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was
26 the overtime compensation for any member of the CALIFORNIA CLASS properly
27 recalculated so as to include all earnings in the overtime compensation calculation as
28

1 required by California Labor Code §§ 510, *et seq.*

2 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
3 CLASS Members is impracticable.

4 28. DEFENDANT violated the rights of the CALIFORNIA CLASS under
5 California law by:

- 6 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof.
7 Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively
8 having in place company policies, practices and procedures that failed
9 to pay all minimum and overtime wages due the CALIFORNIA
10 CLASS for all time worked, and failed to accurately record the
11 applicable rates of all overtime worked by the CALIFORNIA CLASS;
- 12 (b) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
14 unlawfully, unfairly, and/or deceptively having in place a company
15 policy, practice and procedure that failed to correctly calculate overtime
16 compensation due to PLAINTIFF and the members of the
17 CALIFORNIA CLASS;
- 18 (c) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 failing to provide mandatory meal and/or rest breaks to PLAINTIFF
21 and the CALIFORNIA CLASS members;
- 22 (d) Committing an act of unfair competition in violation of the California
23 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
24 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
25 *seq.*, by failing to pay the correct federal overtime wages to the
26 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
27 required by the FLSA, and retaining the unpaid federal overtime to the
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benefit of DEFENDANT;

- (e) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply to every member of the CALIFORNIA CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was subjected to the employment practices of DEFENDANT and was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANT’s practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime worked by the CALIFORNIA CLASS and thereby underpaid overtime compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or

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identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

- (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,

1 making appropriate class-wide relief with respect to the CALIFORNIA
2 CLASS as a whole in that DEFENDANT failed to pay all wages due.
3 Including the correct overtime rate, for all worked by the members of
4 the CALIFORNIA CLASS as required by law;

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

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

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

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

31. 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

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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 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 the CALIFORNIA 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 CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,

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

5 32. DEFENDANT maintains records from which the Court can ascertain and
6 identify by job title each of DEFENDANT’s employees who as have been subjected to
7 DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFF
8 will seek leave to amend the Complaint to include any additional job titles of similarly
9 situated employees when they have been identified.

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11 **THE CALIFORNIA LABOR SUB-CLASS**

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

20 34. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
21 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
22 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
23 failed to correctly calculate overtime compensation for the overtime worked by PLAINTIFF
24 and the other members of the CALIFORNIA LABOR SUB-CLASS, even though
25 DEFENDANT enjoyed the benefit of this work, required employees to perform this work
26 and permitted or suffered to permit this overtime work. DEFENDANT has denied these
27 CALIFORNIA LABOR SUB-CLASS Members overtime wages at the correct amount to
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1 which these employees are entitled in order to unfairly cheat the competition and unlawfully
2 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
3 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
4 should be adjusted accordingly.

5 35. DEFENDANT maintains records from which the Court can ascertain and
6 identify by name and job title, each of DEFENDANT's employees who have been subjected
7 to DEFENDANT's company policy, practices and procedures as herein alleged.
8 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
9 similarly situated employees when they have been identified.

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

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

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

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

16 39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
17 CLASS under California law by:

- 18 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 19 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
20 CLASS the correct overtime pay for which DEFENDANT is liable
21 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 22 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
- 23 accurately pay PLAINTIFF and the members of the CALIFORNIA
24 LABOR SUB-CLASS the correct minimum wage pay for which
25 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 26 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
- 27 PLAINTIFF and the other members of the CALIFORNIA LABOR
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SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

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

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

(f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties; and,

(g) Violating Cal. Lab. Code § 212, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS their wages by an instrument payable on demand, without discount.

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

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

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

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

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

6 1) Inconsistent or varying adjudications with respect to individual
7 members of the CALIFORNIA LABOR SUB-CLASS which
8 would establish incompatible standards of conduct for the
9 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

22 (c) Common questions of law and fact predominate as to the members of
23 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
24 and violations of California Law as listed above, and predominate over
25 any question affecting only individual CALIFORNIA LABOR SUB-
26 CLASS Members, and a Class Action is superior to other available
27 methods for the fair and efficient adjudication of the controversy,
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1 including consideration of:

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

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

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

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

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

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

10 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
11 ascertainable from the business records of DEFENDANT. The
12 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
13 CLASS Members classified as non-exempt employees during the
14 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

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20 **FIRST CAUSE OF ACTION**

21 **For Unlawful Business Practices**

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

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

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

27 44. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
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1 Code § 17021.

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

6 Any person who engages, has engaged, or proposes to engage in unfair
7 competition may be enjoined in any court of competent jurisdiction. The court
8 may make such orders or judgments, including the appointment of a receiver, as
9 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.

10 Cal. Bus. & Prof. Code § 17203.

11 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 204, 210, 212, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, Cal. Code
15 Regs., tit. 8, § 11040. Subdivision 5(B), and the Fair Labor Standards Act (“FLSA”), 29 U.S.C.
16 §§ 201, *et seq.*, for which this Court should issue declaratory and other equitable relief pursuant
17 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
18 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

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

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

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

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

60. 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.

61. 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.

62. 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.

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

1 members of the CALIFORNIA LABOR SUB-CLASS.

2 64. 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 denies accurate compensation to PLAINTIFF and the
5 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

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

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

27 69. DEFENDANT knew or should have known that PLAINTIFF and the other
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1 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
2 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
3 to not pay employees for their labor as a matter of company policy, practice and procedure, and
4 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

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

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

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

9 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
11 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
12 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
13 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
14 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
15 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
16 any workweek.

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

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

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

27 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
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1 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
2 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
3 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
5 correct amount of overtime worked and correct applicable overtime rate for the amount of
6 overtime they worked. As set forth herein, DEFENDANT's policy and practice was to
7 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
9 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
10 all overtime worked.

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

17 79. In committing these violations of the California Labor Code, DEFENDANT
18 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
19 consequently underpaid the actual time worked by PLAINTIFF and other members of the
20 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
21 payment of all earned wages, and other benefits in violation of the California Labor Code, the
22 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

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

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

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

23 85. DEFENDANT knew or should have known that PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
25 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
26 to not pay employees for their labor as a matter of company policy, practice and procedure, and
27 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
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1 of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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6 **FIFTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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8 **SIXTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 226]**

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

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

16 97. Cal. Labor Code § 226 provides that an employer must furnish employees with
17 an “accurate itemized” statement in writing showing:

18 (1) gross wages earned,

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

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

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

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

9 98. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
10 employees with an accurate itemized wage statement in writing showing, among other things,
11 gross wages earned and all applicable hourly rates in effect during the pay period and the
12 corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated
13 Cal. Lab. Code § 226(a)(8) from time to time by failing to include both DEFENDANT's name
14 and address of its legal entity on the itemized wage statements of PLAINTIFF and other
15 members of the CALIFORNIA LABOR SUB-CLASS. From time to time, DEFENDANT
16 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
17 gross wages earned. Aside from the violations listed above, DEFENDANT failed to issue to
18 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
19 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
20 other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
21 violated Cal. Lab. Code § 226.

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

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7 **SEVENTH CAUSE OF ACTION**

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

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

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

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

15 101. Cal. Lab. Code § 200 provides that:

16 As used in this article:

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

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

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

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

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

1 provide payment within 72 hours of the notice of quitting.

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

4 105. Cal. Lab. Code § 203 provides:

5 If an employer willfully fails to pay, without abatement or reduction, in
6 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
7 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.

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

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

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18 **EIGHTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 2802]**

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

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

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

27 An employer shall indemnify his or her employee for all necessary expenditures
28 or losses incurred by the employee in direct consequence of the discharge of his

1 or her duties, or of his or her obedience to the directions of the employer, even
2 though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful.

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

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

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1 **NINTH CAUSE OF ACTION**

2 **For Failure to Issue Wages by Instrument Payable on Demand Without Discount**

3 **[Cal. Lab. Code § 212]**

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

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

9 113. California Labor Code § 212 requires DEFENDANT to pay PLAINTIFF, and
10 the other members of the CALIFORNIA LABOR SUB-CLASS, with instruments that are
11 negotiable and payable in cash, on demand, without discount, at some established business
12 in the state, the name and address of which must appear on the instrument.

13 114. DEFENDANT from time to time issued wages to PLAINTIFF, and the other
14 members of the CALIFORNIA LABOR SUB-CLASS, by way of a paycard. This form of
15 payment required PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, to incur a fee when attempting to obtain all of their wages on demand, no
17 alternative was offered which enabled them to avoid a charge, and no address in California
18 was set forth on the paycard where all of the funds deposited thereon could be made
19 available without charge. Because DEFENDANT offered no method by which PLAINTIFF,
20 and the other members of the CALIFORNIA LABOR SUB-CLASS, could receive all the
21 wages from their paycard on demand, without paying any fee, it is alleged that this practice
22 violates Labor Code § 212, requiring that wages be payable on demand, without discount.
23 Labor Code § 225.5 provides penalties resulting from Labor Code § 212 violations.

24 115. As a result of DEFENDANT's failure to pay PLAINTIFF, and the other
25 members of the CALIFORNIA LABOR SUB-CLASS, their wages by an instrument payable
26 on demand, without discount, in violation of Labor Code § 212, PLAINTIFF, and the other
27 members of the CALIFORNIA LABOR SUB-CLASS, have suffered injury to the extent

1 they paid ATM fees or other fees and could not cash the entirety of their paycheck at once,
2 thus denying them access to their wages.

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

7 **TENTH CAUSE OF ACTION**

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

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

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

11 117. PLAINTIFF incorporates by reference the allegations set forth in paragraphs
12 1-116, supra, as though fully set forth at this point.

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

23 119. PLAINTIFF, and such persons that may be added from time to time who satisfy
24 the requirements and exhaust the administrative procedures under the Private Attorney General
25 Act, brings this Representative Action on behalf of the State of California with respect to
26 himself and all individuals who worked for DEFENDANT in California and were classified as
27 non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time period of
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1 November 21, 2018 until a date as determined by the Court (the "PAGA PERIOD").

2 120. On November 21, 2019, PLAINTIFF gave written notice by electronic mail to the
3 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
4 employer of the specific provisions of this code alleged to have been violated as required by
5 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
6 herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
7 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
8 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
9 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

10 121. The policies, acts and practices heretofore described were and are an unlawful
11 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
12 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
13 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
14 to pay minimum wages, (e) failed to provide wages when due, (f) failed to reimburse employees
15 for required expenses, and (g) failed to issue wages by instrument payable on demand without
16 discount, all in violation of the applicable Labor Code sections listed in Labor Code Sections
17 §§ 201, 202, 203, 204, 210, 212, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
18 1198, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to civil
19 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as
20 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
21 State of California for the illegal conduct perpetrated on PLAINTIFF and the other
22 AGGRIEVED EMPLOYEES.

23 122. All of the conduct and violations alleged herein occurred during the
24 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
25 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations

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

1 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
2 2018 AJDAR 12157 (Certified for Publication 12/19/18).

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
20 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
22 B) Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum and overtime compensation due PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
25 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
26 statutory rate;
27 C) Meal and rest period compensation pursuant to California Labor Code Section
28 226.7 and the applicable IWC Wage Order;

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

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

9 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
10 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
11 costs of suit; and,

12 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
13 1197.

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

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

18 4. On all claims:

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

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

21 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
22 law, including, but not limited to, pursuant to Labor Code § 226, § 1194 and/or

23 ///

24 ///

25 ///

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1 § 2802.


2

3 Dated: June 11, 2020

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BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

5

By: 
Norman B. Blumenthal
Attorneys for Plaintiff

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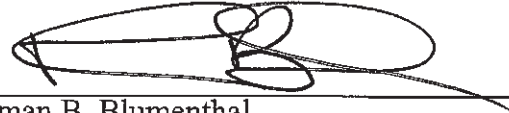
DEMAND FOR A JURY TRIAL

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

Dated: June 11, 2020

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____



Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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WRITERS E-MAIL:
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WRITERS EXT:
1004

November 21, 2019
CA1956

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Asendia USA, Inc.
Online Filing Certified Mail # 70191120000066523984
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 212, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Asendia USA, Inc. in California and classified as non-exempt employees during the time period of November 21, 2018 until a date as determined by the Court. Our offices represent Plaintiff Eduardo Cinto (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Asendia USA, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from August of 2015 to August of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204, 210, 212, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Restations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

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3 2255 Calle Clara

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4 Telephone: (858)551-1223

Facsimile: (858) 551-1232

5 Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9
10 EDUARDO CINTO, an individual, on
behalf of himself, and on behalf of all
11 persons similarly situated,

12 Plaintiff,

13 vs.

14 ASENDIA USA, INC., a Corporation; and
Does 1 through 50, Inclusive,

15 Defendants.
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Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
9. FAILURE TO ISSUE WAGES BY INSTRUMENT PAYABLE ON DEMAND WITHOUT DISCOUNT IN VIOLATION OF CAL. LAB. CODE §§ 212.

DEMAND FOR A JURY TRIAL

1 Plaintiff Eduardo Cinto (“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 Asendia USA, Inc. (“DEFENDANT”) is a Corporation and at all
7 relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business in the state of California.

9 2. DEFENDANT provides shipping and delivery services to its customers.
10 DEFENDANT was founded in 2012.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to overtime pay and meal and rest periods from August of 2015 to August of
13 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as
14 a non-exempt employee paid in whole or in part on an hourly basis and received additional
15 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

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

24
25 **THE CONDUCT**

26 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
27 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
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1 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
2 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
3 all time worked, meaning the time during which an employee was subject to the control of an
4 employer, including all the time the employee was permitted or suffered to permit this work.
5 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the
6 clock without paying them for all the time they were under DEFENDANT's control.
7 Specifically, PLAINTIFF and CALIFORNIA CLASS Members would clock out of
8 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT
9 as required to meet DEFENDANT's job requirements. During the CALIFORNIA CLASS
10 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to
11 perform work off the clock before clocking in and after clocking out, in that DEFENDANT, as
12 a condition of employment, required these employees to wait for and submit to loss prevention
13 inspections at the beginning and end of each scheduled shift for which DEFENDANT did not
14 provide compensation for time spent waiting for and submitting to DEFENDANT's loss
15 prevention inspections off the clock. Further, as a result of their rigorous work schedules and
16 DEFENDANT's loss prevention inspection policy, PLAINTIFF and other CALIFORNIA
17 LABOR SUB-CLASS Members were from time to time not fully relieved of duty by
18 DEFENDANT for their meal periods. As a result, PLAINTIFF and other CALIFORNIA
19 CLASS Members forfeited minimum wages and overtime wage compensation by working
20 without their time being correctly recorded and without compensation at the applicable rates.
21 DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
22 Members for all time worked, is evidenced by DEFENDANT's business records.

23 9. State law provides that employees must be paid overtime at one-and-one-half
24 times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
25 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
26 employee's performance.

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

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

24 12. As a result of their rigorous work schedules, PLAINTIFF and other
25 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
26 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
27 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT,
28

1 from time to time, for more than five (5) hours during a shift without receiving an off-duty meal
2 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
3 Members with a second off-duty meal period from time to time in which these employees were
4 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other
5 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
6 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

18 14. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
19 employees with an accurate itemized wage statement in writing showing, among other things,
20 gross wages earned and all applicable hourly rates in effect during the pay period and the
21 corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated
22 Cal. Lab. Code § 226(a)(8) from time to time by failing to include both DEFENDANT's name
23 and address of its legal entity on the itemized wage statements of PLAINTIFF and other
24 members of the CALIFORNIA CLASS. From time to time, DEFENDANT violated Cal. Lab.
25 Code § 226 by failing to provide wage statements that identified the correct gross wages earned.
26 Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
27 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
28

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

3 15. DEFENDANT as a matter of corporate policy, practice and procedure,
4 intentionally and knowingly failed to reimburse and indemnify PLAINTIFF and the other
5 CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFF
6 and other CALIFORNIA CLASS Members in direct consequence of discharging their duties
7 on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
8 required to indemnify employees for all expenses incurred in the course and scope of their
9 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
10 her employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties, or of his or her obedience to the directions
12 of the employer, even though unlawful, unless the employee, at the time of obeying the
13 directions, believed them to be unlawful."

14 16. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
15 Members as a business expense, were required by DEFENDANT to use their own personal cell
16 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
17 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
18 their personal cell phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other
19 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
20 phones to for work related issues. As a result, in the course of their employment with
21 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
22 unreimbursed business expenses which included, but were not limited to, costs related to the
23 use of their personal cell phones all on behalf of and for the benefit of DEFENDANT.

24 17. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA
25 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
26 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by
27 engaging in a company-wide policy and procedure which failed to accurately calculate and
28

1 record the correct overtime rate for the overtime worked by PLAINTIFF and other
2 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour
3 rates is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of
4 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
5 required overtime compensation for work performed by the members of the CALIFORNIA
6 CLASS and violated the California Labor Code and regulations promulgated thereunder as
7 herein alleged.

8 18. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to
9 him in the form of two components. One component of PLAINTIFF's compensation was a
10 base hourly wage. The second component of PLAINTIFF's compensation was non-
11 discretionary incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF
12 met certain predefined performance requirements. PLAINTIFF met DEFENDANT's
13 predefined eligibility performance requirements in various pay periods throughout his
14 employment with DEFENDANT and DEFENDANT paid PLAINTIFF the incentive wages.
15 During these pay periods in which PLAINTIFF was paid the non-discretionary incentive wages
16 by DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but DEFENDANT
17 never included the incentive compensation in PLAINTIFF's regular rate of pay for the purposes
18 of calculating what should have been PLAINTIFF's accurate overtime rate and thereby
19 underpaid PLAINTIFF for overtime worked throughout his employment with DEFENDANT.
20 The incentive compensation paid by DEFENDANT constituted wages within the meaning of
21 the California Labor Code and thereby should have been part of PLAINTIFF's "regular rate of
22 pay." PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and
23 was not fully relieved of duty for his meal periods. PLAINTIFF was required to perform work
24 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an
25 off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-
26 duty meal period from time to time in which he was required by DEFENDANT to work ten (10)
27 hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
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1 compensation and in accordance with DEFENDANT’s strict corporate policy and practice.
2 DEFENDANT also provided PLAINTIFF with a pay stub that failed to comply with all the
3 requirements set forth in Cal. Lab. Code § 226(a). Specifically, DEFENDANT violated Cal.
4 Lab. Code § 226(a)(8) by failing to list the name and address of its legal entity on the itemized
5 wage statements provided to PLAINTIFF. To date, DEFENDANT has not fully paid
6 PLAINTIFF the overtime compensation still owed to him or any penalty wages owed to him
7 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not
8 exceed the sum or value of \$75,000.

9
10 **JURISDICTION AND VENUE**

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

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

21 **THE CALIFORNIA CLASS**

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

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

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

20 24. DEFENDANT, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
22 requirements, and the applicable provisions of California law, intentionally, knowingly, and
23 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate and record
24 minimum wage and overtime compensation for overtime worked by PLAINTIFF and the other
25 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
26 work, required employees to perform this work and permitted or suffered to permit this work.

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

11 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
12 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
13 employee for all overtime worked at the applicable rate, as required by California Labor Code
14 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
15 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
16 as to include all earnings in the overtime compensation calculation as required by California
17 Labor Code §§ 510, *et seq.*

18 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
19 CLASS Members is impracticable.

20 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
21 California law by:

- 22 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
23 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
24 place company policies, practices and procedures that failed to pay all
25 minimum and overtime wages due the CALIFORNIA CLASS for all time
26 worked, and failed to accurately record the applicable rates of all overtime
27 worked by the CALIFORNIA CLASS;

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

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

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

18 (e) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
20 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
21 the CALIFORNIA CLASS members with necessary expenses incurred in
22 the discharge of their job duties.

23 29. 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 uniformly to every member of the CALIFORNIA
4 CLASS;

5 (c) The claims of the representative PLAINTIFF are typical of the claims of
6 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
7 other members of the CALIFORNIA CLASS, was subjected to the
8 uniform employment practices of DEFENDANT and was a non-exempt
9 employee paid on an hourly basis and paid additional non-discretionary
10 incentive wages who was subjected to the DEFENDANT's practice and
11 policy which failed to pay the correct rate of overtime wages due to the
12 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
13 CLASS and thereby underpaid overtime compensation to the
14 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
15 result of DEFENDANT's employment practices. PLAINTIFF and the
16 members of the CALIFORNIA CLASS were and are similarly or
17 identically harmed by the same unlawful, deceptive, unfair and pervasive
18 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

6 1) Inconsistent or varying adjudications with respect to individual
7 members of the CALIFORNIA CLASS which would establish
8 incompatible standards of conduct for the parties opposing the
9 CALIFORNIA CLASS; and/or,

10 2) Adjudication with respect to individual members of the
11 CALIFORNIA CLASS which would as a practical matter be
12 dispositive of interests of the other members not party to the
13 adjudication or substantially impair or impede their ability to
14 protect their interests.

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

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

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

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting

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

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

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

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

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

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

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

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

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

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

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

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

- 27 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
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1 overtime compensation to members of the CALIFORNIA LABOR SUB-
2 CLASS in violation of the California Labor Code and California
3 regulations and the applicable California Wage Order;

4 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
5 entitled to overtime compensation for overtime worked under the overtime
6 pay requirements of California law;

7 (c) Whether DEFENDANT failed to accurately record the applicable
8 overtime rates for all overtime worked PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS;

10 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
11 members of the CALIFORNIA LABOR SUB-CLASS with legally
12 required uninterrupted thirty (30) minute meal breaks and rest periods;

13 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS with accurate
15 itemized wage statements;

16 (f) Whether DEFENDANT has engaged in unfair competition by the
17 above-listed conduct;

18 (g) The proper measure of damages and penalties owed to the members of the
19 CALIFORNIA LABOR SUB-CLASS; and,

20 (h) Whether DEFENDANT's conduct was willful.

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

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

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

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

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

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

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

27 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
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1 the CALIFORNIA LABOR SUB-CLASS members with necessary
2 expenses incurred in the discharge of their job duties; and,

- 3 (g) Violating Cal. Lab. Code § 212, by failing to provide PLAINTIFF and the
4 other members of the CALIFORNIA CLASS their wages by an
5 instrument payable on demand, without discount.

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

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

12 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
13 that are raised in this Complaint are common to the CALIFORNIA
14 LABOR SUB-CLASS and will apply uniformly to every member of the
15 CALIFORNIA LABOR SUB-CLASS;

16 (c) The claims of the representative PLAINTIFF are typical of the claims of
17 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
18 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
19 was a non-exempt employee paid on an hourly basis and paid additional
20 non-discretionary incentive wages who was subjected to the
21 DEFENDANT's practice and policy which failed to pay the correct rate
22 of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for
23 all overtime worked. PLAINTIFF sustained economic injury as a result
24 of DEFENDANT's employment practices. PLAINTIFF and the members
25 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
26 identically harmed by the same unlawful, deceptive, unfair and pervasive
27 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

15 1) Inconsistent or varying adjudications with respect to individual
16 members of the CALIFORNIA LABOR SUB-CLASS which
17 would establish incompatible standards of conduct for the parties
18 opposing the CALIFORNIA LABOR SUB-CLASS; or,

19 2) Adjudication with respect to individual members of the
20 CALIFORNIA LABOR SUB-CLASS which would as a practical
21 matter be dispositive of interests of the other members not party to
22 the adjudication or substantially impair or impede their ability to
23 protect their interests.

24 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
25 or refused to act on grounds generally applicable to the CALIFORNIA
26 LABOR SUB-CLASS, making appropriate class-wide relief with respect
27 to the CALIFORNIA LABOR SUB-CLASS as a whole in that

1 DEFENDANT uniformly failed to pay all wages due. Including the
2 correct overtime rate, for all overtime worked by the members of the
3 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

24 B. Adjudications with respect to individual members of the
25 CALIFORNIA LABOR SUB-CLASS would as a practical
26 matter be dispositive of the interests of the other members
27 not parties to the adjudication or substantially impair or
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- 1 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
2 Members, will not be able to obtain effective and economic legal redress
3 unless the action is maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
5 equitable relief for the acts of unfair competition, statutory violations and
6 other improprieties, and in obtaining adequate compensation for the
7 damages and injuries which DEFENDANT's actions have inflicted upon
8 the CALIFORNIA LABOR SUB-CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of
11 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally applicable
13 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
14 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
15 CLASS as a whole;
- 16 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
17 ascertainable from the business records of DEFENDANT. The
18 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
19 CLASS Members classified as non-exempt employees during the
20 CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 21 (i) Class treatment provides manageable judicial treatment calculated to bring
22 a efficient and rapid conclusion to all litigation of all wage and hour
23 related claims arising out of the conduct of DEFENDANT as to the
24 members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

10 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver, as
17 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.

18 Cal. Bus. & Prof. Code § 17203.

19 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
22 including Sections 204, 210, 212, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, Cal. Code
23 Regs., tit. 8, § 11040. Subdivision 5(B), and the Fair Labor Standards Act (“FLSA”), 29 U.S.C.
24 §§ 201, *et seq.*, for which this Court should issue declaratory and other equitable relief pursuant
25 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
26 to constitute unfair competition, including restitution of wages wrongfully withheld.

27 47. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
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1 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
2 unscrupulous or substantially injurious to employees, and were without valid justification or
3 utility for which this Court should issue equitable and injunctive relief pursuant to Section
4 17203 of the California Business & Professions Code, including restitution of wages wrongfully
5 withheld.

6 48. By the conduct alleged herein, DEFENDANT's practices were deceptive and
7 fraudulent in that DEFENDANT failed to pay PLAINTIFF, and other members of the
8 CALIFORNIA CLASS, wages due for overtime worked, reporting time wages due, failed to
9 accurately to record the applicable rate of all overtime worked, and failed to provide the
10 required amount of overtime compensation due to a miscalculation of the overtime rate that
11 cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
12 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
13 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
14 including restitution of wages wrongfully withheld.

15 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
16 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANT.

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

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

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

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

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

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

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

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

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4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

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

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

8 **and Against All Defendants)**

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

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

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

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

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

24 63. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
26 time they work, including time spent engaging in work tasks while off the clock. To the extent
27 that these off-the-clock job tasks do not qualify for overtime premium payment, DEFENDANT

1 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
2 §§ 1194, 1197, and 1197.1. As set forth herein, DEFENDANT's policy and practice was to
3 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

27 69. DEFENDANT knew or should have known that PLAINTIFF and the other
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1 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
2 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
3 to not pay employees for their labor as a matter of company policy, practice and procedure, and
4 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

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

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

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

9 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
11 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
12 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
13 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
14 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
15 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
16 any workweek.

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

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

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

27 77. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
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1 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
2 overtime worked and correct applicable overtime rate for the amount of overtime they worked.
3 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally
4 deny timely payment of wages due for the overtime worked by PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay
6 these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

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

6 83. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
7 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
8 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
9 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
11 to accurately record and pay using the applicable overtime rate as evidenced by
12 DEFENDANT's business records and witnessed by employees.

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

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

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

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

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19 **FOURTH CAUSE OF ACTION**

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

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

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

24 88. 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 89. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
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1 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
2 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
3 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
4 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
5 duties for the legally required off-duty meal periods. As a result of their rigorous work
6 schedules and DEFENDANT's loss prevention inspection, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of
8 duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
9 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
10 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
11 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
12 therefore forfeited meal breaks without additional compensation and in accordance with
13 DEFENDANT's strict corporate policy and practice.

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

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

1 (8) the name and address of the legal entity that is the employer, and
2 (9) all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 98. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
5 employees with an accurate itemized wage statement in writing showing, among other things,
6 gross wages earned and all applicable hourly rates in effect during the pay period and the
7 corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated
8 Cal. Lab. Code § 226(a)(8) from time to time by failing to include both DEFENDANT's name
9 and address of its legal entity on the itemized wage statements of PLAINTIFF and other
10 members of the CALIFORNIA CLASS. From time to time, DEFENDANT violated Cal. Lab.
11 Code § 226 by failing to provide wage statements that identified the correct gross wages earned.
12 Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
13 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
14 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
15 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

9 101. Cal. Lab. Code § 200 provides that:

10 As used in this article:

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

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

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

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

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

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

105. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
who is discharged or who quits, the wages of the employee shall continue as a
penalty from the due date thereof at the same rate until paid or until an action

1 therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

11
12 **EIGHTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 2802]**

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

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

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

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

24 110. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
25 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
27 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-

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

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

18
19 **NINTH CAUSE OF ACTION**

20 **For Failure to Issue Wages by Instrument Payable on Demand Without Discount**

21 **[Cal. Lab. Code § 212]**

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

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

27 113. California Labor Code § 212 requires DEFENDANT to pay PLAINTIFF, and
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1 the other members of the CALIFORNIA LABOR SUB-CLASS, with instruments that are
2 negotiable and payable in cash, on demand, without discount, at some established business
3 in the state, the name and address of which must appear on the instrument.

4 114. DEFENDANT from time to time issued wages to PLAINTIFF, and the other
5 members of the CALIFORNIA LABOR SUB-CLASS, by way of a paycard. This form of
6 payment required PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, to incur a fee when attempting to obtain all of their wages on demand, no
8 alternative was offered which enabled them to avoid a charge, and no address in California
9 was set forth on the paycard where all of the funds deposited thereon could be made
10 available without charge. Because DEFENDANT offered no method by which PLAINTIFF,
11 and the other members of the CALIFORNIA LABOR SUB-CLASS, could receive all the
12 wages from their paycard on demand, without paying any fee, it is alleged that this practice
13 violates Labor Code § 212, requiring that wages be payable on demand, without discount.
14 Labor Code § 225.5 provides penalties resulting from Labor Code § 212 violations.

15 115. As a result of DEFENDANT’s failure to pay PLAINTIFF, and the other
16 members of the CALIFORNIA LABOR SUB-CLASS, their wages by an instrument payable
17 on demand, without discount, in violation of Labor Code § 212, PLAINTIFF, and the other
18 members of the CALIFORNIA LABOR SUB-CLASS, have suffered injury to the extent
19 they paid ATM fees or other fees and could not cash the entirety of their paycheck at once,
20 thus denying them access to their wages.

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

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1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
17 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
18 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum and overtime compensation due PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
22 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
23 statutory rate;
- 24 C) 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.;

F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

G) 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, § 1194 and/or § 2802.

Dated: November 21, 2019

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: November 21, 2019

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff