

SUMMONS
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

IMPACT GROUP, LLC, a Limited Liability Company; and Does 1 through 50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CHRISTINE ROSE, an individual, on behalf of herself and on behalf of all persons similarly situated,

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 ORANGE

Complex

751 W. Santa Ana Blvd., Santa Ana, CA 92702

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 B. Blumenthal (Bar # 68687)

Blumenthal Nordrehaug Bhowmik De Blouw 2255 Calle Clara, La Jolla, CA 92037

Judge Randall J. Sherman

Fax No.: (858) 551-1232

Phone No.: (858) 551-1223

DATE: 05/27/2020

(Fecha)

Clerk, by

(Secretario)

DAVID H. YAMASAKI, Clerk of the Court

, Deputy

(Adjunto)

CASE NUMBER:
(Número del Caso):

30-2020-01141107-CU-OE-CXC

(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)). Sarah Loose



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.

2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation)

CCP 416.20 (defunct corporation)

CCP 416.40 (association or partnership)

other (specify):

CCP 416.60 (minor)

CCP 416.70 (conservatee)

CCP 416.90 (authorized person)

4. by personal delivery on (date):

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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Website: www.bamlawca.com

6

Attorneys for Plaintiff

7

SUPERIOR COURT OF THE STATE OF CALIFORNIA

8

IN AND FOR THE COUNTY OF ORANGE

9

10 CHRISTINE ROSE, an individual, on
behalf of herself, and on behalf of all
11 persons similarly situated,

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Plaintiff,

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vs.

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IMPACT GROUP, LLC, a Limited
Liability Company; and Does 1 through
50, Inclusive,

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Defendants.

Case No. 30-2020-01141107-CU-OE-CXC

Assigned for all purposes to: Judge Randall J. Sherman Dept: CX105

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; and,
8. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

1 Plaintiff Christine Rose (“PLAINTIFF”), an individual, on behalf of herself and all other
2 similarly situated current and former employees, alleges on information and belief, except for
3 her own acts and knowledge which are based on personal knowledge, the following:
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5 **THE PARTIES**

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

9 2. DEFENDANT wholesales and distributes food products. The Company provides
10 general line of groceries.

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 June of 2018 to February 7,
13 of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
14 as 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 herself 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 herself 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
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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.

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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. As a result
7 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were
8 from time to time not fully relieved of duty by DEFENDANT for their meal periods and would
9 clock out of DEFENDANT’s timekeeping system but continue to work at DEFENDANT’s
10 direction during what should have been their off-duty meal period. Additionally, from time to
11 time PLAINTIFF and other CALIFORNIA CLASS Members were required to respond to
12 DEFENDANT while off the clock via their cell phones for work related requests and
13 scheduling. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
14 minimum wages and overtime wage compensation by working without their time being
15 correctly recorded and without compensation at the applicable rates. DEFENDANT’s policy
16 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
17 worked, is evidenced by DEFENDANT’s business records.

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

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

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

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

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

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

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

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

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

10 18. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to
11 her in the form of two components. One component of PLAINTIFF’s compensation was a base
12 hourly wage. The second component of PLAINTIFF’s compensation was non-discretionary
13 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain
14 predefined performance requirements. PLAINTIFF met DEFENDANT’s predefined eligibility
15 performance requirements in various pay periods throughout her employment with
16 DEFENDANT and DEFENDANT paid PLAINTIFF the incentive wages. During these pay
17 periods in which PLAINTIFF was paid the non-discretionary incentive wages by
18 DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but DEFENDANT never
19 included the incentive compensation in PLAINTIFF’s regular rate of pay for the purposes of
20 calculating what should have been PLAINTIFF’s accurate overtime rate and thereby underpaid
21 PLAINTIFF for overtime worked throughout her employment with DEFENDANT. The
22 incentive compensation paid by DEFENDANT constituted wages within the meaning of the
23 California Labor Code and thereby should have been part of PLAINTIFF’s “regular rate of
24 pay.” PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and
25 was not fully relieved of duty for her meal periods. PLAINTIFF was required to perform work
26 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an
27 off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-

1 duty meal period from time to time in which she was required by DEFENDANT to work ten
2 (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
3 compensation and in accordance with DEFENDANT's corporate policy and practice.
4 DEFENDANT also provided PLAINTIFF with a pay stub that failed to comply with all the
5 requirements set forth in Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid
6 PLAINTIFF the wages still owed to her or any penalty wages owed to her under Cal. Lab. Code
7 § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or
8 value of \$75,000.

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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, 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 failed
23 to correctly calculate and record minimum wage and overtime compensation for overtime
24 worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
25 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
26 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 violated the rights of the CALIFORNIA CLASS under California
21 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 to every member of the CALIFORNIA CLASS;
- 4 (c) The claims of the representative PLAINTIFF are typical of the claims of
5 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
6 other members of the CALIFORNIA CLASS, was subjected to the
7 employment practices of DEFENDANT and was a non-exempt employee
8 paid on an hourly basis and paid additional non-discretionary incentive
9 wages who was subjected to the DEFENDANT's practice and policy
10 which failed to pay the correct rate of overtime wages due to the
11 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
12 CLASS and thereby underpaid overtime compensation to the
13 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
14 result of DEFENDANT's employment practices. PLAINTIFF and the
15 members of the CALIFORNIA CLASS were and are similarly or
16 identically harmed by the same unlawful, deceptive, and unfair
17 misconduct engaged in by DEFENDANT; and,
- 18 (d) The representative PLAINTIFF will fairly and adequately represent and
19 protect the interest of the CALIFORNIA CLASS, and has retained
20 counsel who are competent and experienced in Class Action litigation.
21 There are no material conflicts between the claims of the representative
22 PLAINTIFF and the members of the CALIFORNIA CLASS that would
23 make class certification inappropriate. Counsel for the CALIFORNIA
24 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
25 Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
25 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
26 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
27 SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint

1 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
2 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
3 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
4 (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, 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 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,
- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the

1 representative PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
4 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

21
22 **FIRST CAUSE OF ACTION**

23 **For Unlawful Business Practices**

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

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

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

1 Complaint.

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

4 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
5 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
6 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
7 competition as follows:

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

12 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

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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. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
20 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 and
4 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
5 amount of overtime worked and correct applicable overtime rate for the amount of overtime
6 they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
7 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and
8 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact
9 failed to pay these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

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

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

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

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

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

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

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

21 91. 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 **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 from time to time were denied their first rest periods of
12 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
13 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
14 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
15 shifts worked of ten (10) hours or more. From time to time, PLAINTIFF and other
16 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
17 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
19 periods by DEFENDANT and 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. From time to time, DEFENDANT
8 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
9 gross wages earned. Aside from the violations listed above, DEFENDANT failed to issue to
10 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
11 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
12 other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
13 violated Cal. Lab. Code § 226.

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

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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.

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

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

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

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

27 104. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
28 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 herself 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 LABOR SUB-CLASS Members were required by
4 DEFENDANT to use their personal cell phones in order to perform work related job tasks.
5 DEFENDANT's policy, practice and procedure was to not reimburse PLAINTIFF and the
6 CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal
7 cell phones for DEFENDANT within the course and scope of their employment for
8 DEFENDANT. These expenses were necessary to complete their principal job duties.
9 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
10 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and
11 the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
12 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
13 expenses as an employer is required to do under the laws and regulations of California.

14 111. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
15 by her 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 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
21 severally, as follows:

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

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

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

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

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

15 C) Meal and rest period compensation pursuant to California Labor Code Section
16 226.7 and the applicable IWC Wage Order;

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

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

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

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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: May 27, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

/s/ Norman Blumenthal

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

