

**SUMMONS
(CITACION JUDICIAL)**

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

HOMEAGLOW INC., a Delaware corporation; and DOES 1 through 30, Inclusive;

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

JEANETTE GOMES, an individual, on behalf of herself, and on behalf of all persons similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
SUPERIOR COURT STOCKTON
2022 APR 12 AM 11:37
BRANDON E. RILEY, CLERK
BY
NATALIE BASHAW

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.

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.courtinfo.ca.gov/selfhelp/espanol/), 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.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Joaquin Civil Court
180 E. Weber Avenue
Stockton, CA 95202

STK-CV-VOE-2022-2619

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):
Jean-Claude Lapuyade, Esq. SBN: 248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: (Fecha) APR 12 2022 BRANDON E. RILEY Clerk, by NATALIE BASHAW, Deputy (Secretario) (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)).

[SEAL]

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):

VIA FAX

FILED
SUPERIOR COURT-STOCKTON

2022 APR 12 AM 11:34

BRANDON E. RILEY, CLERK

BY
NATALIE BASHAW
DEPUTY

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Attorneys for Plaintiff JEANETTE GOMES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JEANETTE GOMES, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

HOMEAGLOW INC., a Delaware corporation; and DOES 1 through 30, Inclusive;

Defendant.

Case No.

STK-CV-JOE-2022-2619

1 FAX

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 WAGE STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FO

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- REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
 - 8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
 - 9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR JURY TRIAL

6 Plaintiff JEANETTE GOMES ("PLAINTIFF"), an individual, on behalf of herself and all
7 other similarly situated current and former employees alleges on information and belief, except her
8 own acts and knowledge which are based on personal knowledge, the following:

9 **INTRODUCTION**

10 1. PLAINTIFF is an individual who works as a housekeeper in California for defendant
11 HOMEAGLOW INC. ("DEFENDANT"). PLAINTIFF alleges that DEFENDANT has violated and
12 continues to violate the California Labor Code protections applicable to California employees because
13 DEFENDANT has misclassified its California employees as independent contractors. In order to
14 provide services to their customers, DEFENDANT hires California workers to aid DEFENDANT in
15 providing services in the usual course of DEFENDANT's on-demand home cleaning service business
16 to their clients. DEFENDANT controlled and directed the work performed by PLAINTIFF and the
17 other similarly situated misclassified California workers by, among other things, scheduling hours of
18 work, providing job site information, and issuing written policies and procedures for the performance
19 of work and conduct in the workplace. PLAINTIFF and the other similarly situated misclassified
20 California workers are not and were not engaged in a customarily independently established trade,
21 occupation or business as the same nature of the work performed. The costs, as proscribed by law, of
22 the personnel hired to work for DEFENDANT, includes not only the pay of these employees but the
23 cost of the employer's share of tax payments to the federal and state governments for income taxes,
24 social security taxes, Medicare insurance, unemployment insurance and payments for workers'
25 compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest
26 extent possible, DEFENDANT devised a scheme to place the responsibility for the payment of these
27 costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and other similarly situated
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1 California employees. As employer, DEFENDANT is legally responsible for the payment of all these
2 expenses. This lawsuit is brought in order to collect the wages due to PLAINTIFF and all those
3 similarly situated misclassified independent contractors as DEFENDANT's employees, the cost of
4 the employer's share of payments to the federal and state governments for income taxes, social
5 security taxes, Medicare insurance, unemployment insurance and payments for workers'
6 compensation insurance, plus penalties and interest.

7 **THE PARTIES**

8 2. DEFENDANT is a Delaware corporation, that at all relevant times mentioned herein
9 conducted and continues to conduct substantial business in the State of California, County of San
10 Joaquin, and provides home cleaning services.

11 3. DEFENDANT utilizes independent contractors, rather than employees, to provide its
12 clients with on-demand home cleaning services.

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

22 5. The agents, servants and/or employees of the DEFENDANT and each of them acting
23 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the
24 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
25 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
26 Consequently, the acts of DEFENDANT are legally attributable to the other and all DEFENDANTS
27 are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
28 proximate result of the conduct of the DEFENDANT's agents, servants and/or employees.

1 6. DEFENDANT was PLAINTIFF’s employer or persons acting on behalf of
2 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
3 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
4 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
5 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

6 7. DEFENDANT was PLAINTIFF’s employer or persons acting on behalf of
7 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
8 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
9 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
10 for each underpaid employee.

11 8. PLAINTIFF worked as a housekeeper for DEFENDANT from October of 2021 to
12 November of 2021 and was at all times during her employment classified by DEFENDANT as an
13 independent contractor.

14 9. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
15 individuals who worked for DEFENDANT in California as independent contractors (“CALIFORNIA
16 CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint
17 and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in
18 controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars
19 (\$5,000,000.00).

20 10. DEFENDANT’s uniform policies and practices alleged herein were unlawful, unfair
21 and deceptive business practices whereby DEFENDANT retained and continues to retain wages and
22 other benefits due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

23 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
24 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other
25 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT’s past
26 and current unlawful conduct, and all other appropriate legal and equitable relief.

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1 THE CONDUCT

2 **A. Misclassification**

3 12. DEFENDANT engaged in a pattern and practice of misclassifying California workers
4 as independent contractors, hired to perform work and services core to DEFENDANT’s businesses, in
5 violation of California Labor Code Section 226.8. California Labor Code Section 226.8 provides that
6 “[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual
7 as an independent contractor.” The penalty for willful misclassification of employees is a “civil penalty
8 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
9 each violation, in addition to any other penalties or fines permitted by law.” It is further provided that,
10 in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the
11 penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five
12 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by
13 law.” Cal. Labor Code § 226.8.

14 13. Similarly, PLAINTIFF and other members of the CALIFORNIA CLASS were not
15 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
16 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and
17 other members of the CALIFORNIA CLASS were paid the hourly rate to perform labor services on
18 DEFENDANT’s behalf. PLAINTIFF and other workers were not compensated any other wages besides
19 the non-negotiable hourly rate, and they were not allowed to record their time while they waited for
20 DEFENDANT to give them work. DEFENDANT did not pay PLAINTIFF and other CALIFORNIA
21 CLASS members for the time spent driving to and from jobs, the materials required to perform the
22 jobs, and all the other time they spent working for DEFENDANT outside of the job assignment they
23 were placed at with DEFENDANT’s third-party customers. The finite set of tasks required to be
24 performed by the workers is, when notified via cell phone, travel to DEFENDANT’s customers to
25 perform jobs, including but not limited to, residential housekeeping, all in accordance with
26 DEFENDANT’s business practices and policies.

27 14. As a result, stripped of all the legal fictions and artificial barriers to an honest
28 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA

1 CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the other members
2 of the CALIFORNIA CLASS are and were employees of DEFENDANT and not independent
3 contractors of DEFENDANT and should therefore be properly classified as non-exempt, hourly
4 employees.

5 15. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
6 members as defined by DEFENDANT was executed by them through the performance of non-exempt
7 labor.

8 16. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
9 exempt labor subject to DEFENDANT's complete control over the manner and means of performance,
10 DEFENDANT instituted a blanket classification policy, practice and procedure by which all of these
11 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
12 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business
13 related expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members
14 were also required to pay DEFENDANT's share of payroll taxes and mandatory insurance premiums.
15 As a result of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF
16 and the other CALIFORNIA CLASS Members who performed this work for DEFENDANT,
17 DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition
18 law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy,
19 practice and procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA
20 CLASS members as employees and thereby failed to pay them wages for all time worked,
21 reimbursement of business related expenses, failed to provide them with meal and rest breaks, and
22 failed to reimburse these employees for the employer's share of payroll taxes and mandatory insurance.

23 17. DEFENDANT, as a matter of law, has the burden of proving that employees are
24 properly classified and that DEFENDANT otherwise complies with applicable laws. DEFENDANT,
25 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
26 Members as independent contractors in violation of the California Labor Code and regulations
27 promulgated thereunder.

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1 i. **Plaintiff and Other Members of the California Class Were Not Free from**
2 **the Control and Direction of Defendant**

3 18. DEFENDANT controlled and directed the work performed by PLAINTIFF and the
4 other similarly situated misclassified California workers by, among other things, scheduling hours of
5 work, providing job site information, and issuing written policies and procedures for the performance
6 of work and conduct in the workplace. Upon hire, the position was represented by DEFENDANT to
7 PLAINTIFF and the other workers as an independent contractor position in exchange for an hourly rate
8 of pay for the time they spend providing labor and services to DEFENDANT’s third-party customers.

9 19. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
10 CLASS perform work subject to the control of DEFENDANT in that DEFENDANT had the authority
11 to exercise complete control over the work performed and the manner and means in which the work
12 was performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
13 as to how to perform their work.

14 20. California Labor Code § 3357 defines “employee” as “every person in the service of an
15 employer under any appointment or contract of hire or apprenticeship, express or implied, oral or
16 written, whether lawfully or unlawfully employed.” Additionally, to the California Labor Code’s
17 presumption that workers are employees, the California Supreme Court has determined the most
18 significant factor to be considered in distinguishing an independent contractor from an employee is
19 whether the *employer or principal has control or the right to control the work both as to the work*
20 *performed and the manner and means in which the work is performed.* DEFENDANT heavily
21 controlled both the work performed and the manner and means in which the PLAINTIFF and other
22 workers performed their work in that:

23 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
24 involved in a distinct business, but instead were provided with instructions as to how to
25 perform their work and the manner and means in which the work was to be performed
26 by means of DEFENDANT and DEFENDANT’s manuals and written instructions;

27 (b) PLAINTIFF and other members of the CALIFORNIA CLASS were
28 continuously provided with training and supervision, including following

1 DEFENDANT's company documents, and received training from DEFENDANT as to
2 how and in what way to perform the services;

3 (c) DEFENDANT set the requirements as to what policies and procedures all of the
4 workers were to follow, including but not limited to, hourly rates and location of
5 assignment;

6 (d) PLAINTIFF and other members of the CALIFORNIA CLASS had no
7 opportunity for profit or loss because DEFENDANT only paid these workers an hourly
8 rate. DEFENDANT controlled and assigned the workers which tasks were to be
9 performed;

10 (e) PLAINTIFF and other members of the CALIFORNIA CLASS performed
11 services and labor which are part of the core of DEFENDANT's principal business and
12 is closely integrated with and essential to the employer's business of services and labor
13 to their customers;

14 (f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the
15 work themselves and did not hire others to perform their work for them;

16 (g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the
17 authority to make employment-related personnel decisions;

18 (h) PLAINTIFF and other members of the CALIFORNIA CLASS performed their
19 work in a particular order and sequence in accordance with DEFENDANT and
20 DEFENDANT customers company policies; and,

21 (i) DEFENDANT had the "right" to control every critical aspect of DEFENDANT
22 labor operation in that DEFENDANT provided the customer, assigned where
23 PLAINTIFF and other members of the CALIFORNIA CLASS were to go, assigned
24 the hourly rate or flat rate, and step by step instructions to PLAINTIFF and other
25 members of the CALIFORNIA CLASS as to the entire process of working at their
26 assigned locations. PLAINTIFF and other workers provided services and labor for
27 DEFENDANT customers and were not actually in business for themselves.

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1 ii. **Plaintiff and Other Members of the California Class Did Not Perform Work**
2 **Outside the Usual Course of Defendant’s Business**

3 21. DEFENDANT willfully misclassified PLAINTIFF and other members of the
4 CALIFORNIA CLASS who provided DEFENDANT with housekeeping services for DEFENDANT’s
5 clients. In other words, PLAINTIFF and other similarly situated California workers provided
6 DEFENDANT with work and services within the usual course of DEFENDANT’s business.

7 22. DEFENDANT markets itself to the public, PLAINTIFF and other members of the
8 CALIFORNIA CLASS as a provider of on-demand house cleaning services. As a result, DEFENDANT
9 unquestionably holds itself out to the public, PLAINTIFF and other members of the CALIFORNIA
10 CLASS as a provider of on-demand housekeeping services. Therefore, the performance of
11 DEFENDANT’s housekeeping services by PLAINTIFF and other members of the CALIFORNIA
12 CLASS is not outside DEFENDANT’S usual course of business.

13 iii. **Plaintiff and Other Members of the California Class Were Not Engaged in**
14 **an Independently Established Trade, Occupation, or Business of the Same**
15 **Nature as the Work Performed for Defendant**

16 23. PLAINTIFF and the other members of the CALIFORNIA CLASS are not and were not
17 engaged in a customarily independently established trade, occupation or business as the same nature of
18 the work performed.

19 **B. Meal Period Violations**

20 24. In California, an employer may not employ an employee for a work period of more than
21 five hours per day without providing the employee with a duty-free meal period of not less than thirty
22 minutes, except that if the total work period per day of the employee is no more than six hours, the
23 meal period may be waived by mutual consent of both the employer and employee. A second duty-free
24 meal period of not less than thirty minutes is required if an employee works more than ten hours per
25 day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period
26 may be waived by mutual consent of the employer and employee only if the first meal period was not
27 waived. Labor Code Section 512.

28 25. If an employer fails to provide an employee a duty-free meal period in accordance with

1 an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular
2 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
3 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

4 26. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
5 independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA
6 CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully
7 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were
8 required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours
9 during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
10 provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for
11 some workdays in which these employees were required by DEFENDANT to work ten (10) hours of
12 work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
13 without additional compensation and in accordance with DEFENDANT's strict corporate policy and
14 practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided
15 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

16 **C. Rest Period Violations**

17 27. The applicable IWC Wage Order requires that employers must authorize and permit
18 nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of
19 each work period. The rest period is based on the total hours worked daily and must be at the minimum
20 rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The
21 Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a
22 "major fraction" of four. A rest period is not required for employees whose total daily work time is less
23 than three and one-half hours. The rest period is counted as time worked and therefore, the employer
24 must pay for such periods.

25 28. If an employer fails to provide an employee a rest period in accordance with an applicable
26 IWC Order, the employer shall pay the employee one additional hour of pay at the employee's regular
27 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
28 an employer does not provide all of the rest periods required in a workday, the employee is entitled to

1 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
2 was not provided during that workday.

3 29. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
4 independent contractors and their rigorous work schedules PLAINTIFF and other CALIFORNIA
5 CLASS members were also required to work in excess of four (4) hours without being provided ten
6 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
7 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
8 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
9 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
10 (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided
11 with one-hour wages in lieu thereof. As a result of their misclassification and rigorous work schedules,
12 PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time denied their proper
13 rest periods by DEFENDANT and DEFENDANT’S managers.

14 **D. Failure to Pay Minimum, Regular and Overtime Wages**

15 30. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately
16 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
17 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
18 is required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked, meaning
19 the time during which an employee was subject to the control of an employer, including all the time
20 the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and
21 CALIFORNIA CLASS members to work off the clock without paying them for all the time they were
22 under DEFENDANT’S control. PLAINTIFF and other CALIFORNIA CLASS Members also worked
23 more than eight hours in a workday and/or forty hours in a workweek, but DEFENDANT failed to pay
24 these employees overtime pay as DEFENDANT only paid a flat rate or a flat hourly rate for all time
25 worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum
26 wages and overtime wage compensation by working without their time being correctly recorded and
27 without compensation at the applicable rates. DEFENDANT’S policy and practice not to pay
28 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by

1 DEFENDANT's business records. As a result, DEFENDANT failed to compensate PLAINTIFF and
2 the members of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours
3 worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

4 **E. Failure to Reimburse Necessary and Required Business Expenses**

5 31. Under California Labor Code Section 2802, employers are required to indemnify
6 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
7 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
8 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
9 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
10 employee, at the time of obeying the directions, believed them to be unlawful."

11 32. From time-to-time during the CLASS PERIOD, DEFENDANT as a matter of corporate
12 policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and
13 indemnify PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
14 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
15 behalf of DEFENDANT.

16 33. From time-to-time during the CLASS PERIOD, in the course of their employment
17 PLAINTIFF and other CALIFORNIA CLASS members as a business expense, were required by
18 DEFENDANT to use personal cellular phones, personal vehicles, and personal equipment as a result
19 of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed or
20 indemnified by DEFENDANT for the cost associated with the use of the personal cellular phones,
21 personal equipment, and personal vehicles for DEFENDANT's benefit. In order to work for
22 DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members were required to use their
23 personal vehicles to travel to different locations each work shift and were also required to use their
24 personal cell phones to review, receive and accept job assignments and as such it is mandatory to have
25 a cell phone. Additionally, PLAINTIFF and other CALIFORNIA CLASS Members were required to
26 provide their own personal equipment and supplies needed to perform the essential job cleaning duties.
27 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other members of
28 the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not

1 limited to, costs related to the use of their personal cellular phones, personal equipment, and personal
2 vehicle on behalf of and for the benefit of DEFENDANT.

3 **F. Wage Statement Violations**

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

12 35. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of
13 DEFENDANT's intentional and willful misclassification of PLAINTIFF and the members of the
14 CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT issued
15 inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS
16 that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
17 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the
18 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
19 last four digits of the employee's social security number or an employee identification number other
20 than a social security number, (8) the name and address of the legal entity that is the employer and, (9)
21 all applicable hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate by the employee.

23 36. As a result, DEFENDANT issued PLAINTIFF and the other members of the
24 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
25 DEFENDANT's violations are knowing and intentional, were not isolated or due to an unintentional
26 payroll error due to clerical or inadvertent mistake.

27 **G. Unfair Competition**

28 37. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS

1 members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
2 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
3 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
4 CALIFORNIA CLASS members as employees. The proper classification of these employees is
5 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
6 this burden, DEFENDANT failed to pay all required wages for work performed by PLAINTIFF and
7 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations
8 promulgated thereunder as herein alleged.

9 38. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an
10 independent contractor and thus did not receive pay for all time worked, including minimum and
11 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
12 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
13 a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited
14 meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict
15 corporate policy and practice which did not provide for mandatory meal and rest breaks. To date,
16 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty wages owed
17 to her under California Labor Code § 203. The amount in controversy for PLAINTIFF individually
18 does not exceed the sum or value of \$75,000.

19 **THE CALIFORNIA CLASS**

20 39. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
21 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
22 pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the
23 CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
24 Members is under five million dollars (\$5,000,000.00).

25 40. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
26 against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

27 41. All CALIFORNIA CLASS members who performed and continue to perform this work
28 for DEFENDANT during the CLASS PERIOD are similarly situated in that they are subject to

1 DEFENDANT's policy and practice that required them to perform work without compensation as
2 required by law.

3 42. During the CLASS PERIOD, DEFENDANT violated the rights of the PLAINTIFF and
4 the CALIFORNIA CLASS members under California law, without limitation, in the following
5 manners:

6 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
7 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer, devised and implemented
8 a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully,
9 unfairly and deceptively shoulder the cost of DEFENDANT'S wages for all unpaid wages, business
10 related expenses, and DEFENDANT's share of employment taxes, social security taxes, unemployment
11 insurance and workers' compensation insurance;

12 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
13 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,
14 practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS
15 members as independent contractors;

16 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
17 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company
18 policy, practice and procedure that accurately determined the amount of working time spent by
19 PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

20 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
21 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
22 CALIFORNIA CLASS with all legally required meal and rest breaks;

23 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
24 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
25 the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job
26 duties; and,

27 (f) Committing an act of unfair competition in violation of the UCL, by violating
28 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the

1 members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the
2 unpaid overtime to the benefit of DEFENDANT.

3 43. As a result of DEFENDANT's policies, practices and procedures, there are numerous
4 questions of law and fact common to all CALIFORNIA CLASS members who worked for during the
5 CLASS PERIOD. These questions include, but are not limited, to the following:

6 (a) Whether PLAINTIFF and other CALIFORNIA CLASS members were
7 misclassified as independent contractors by DEFENDANT;

8 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded
9 all the protections of the California Labor Code that apply when properly classified as non-exempt
10 employees;

11 (c) Whether DEFENDANT's policies, practices and pattern of conduct described in
12 this Complaint was and is unlawful;

13 (d) Whether DEFENDANT unlawfully failed to pay their share of state and federal
14 employment taxes as required by state and federal tax laws;

15 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
16 CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all
17 time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable
18 provisions of California State law;

19 (f) Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA
20 CLASS members with accurate records of all time worked;

21 (g) Whether DEFENDANT has engaged in unfair competition by the above-listed
22 conduct; and,

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

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

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

1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
2 raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every
3 CALIFORNIA CLASS member;

4 (c) The claims of the representative PLAINTIFF are typical of the claims of each
5 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was
6 classified as an independent contractor upon hiring based on the defined corporate policies and practices
7 and labors under DEFENDANT'S procedure that failed to properly classify the PLAINTIFF and the
8 CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of DEFENDANT's
9 employment practices. PLAINTIFF and the CALIFORNIA CLASS members were and are similarly or
10 identically harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct
11 engaged in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS members that they
12 were not entitled to minimum wages, the employer's share of payment of payroll taxes and mandatory
13 insurance, and reimbursement for business expenses based on the defined corporate policies and
14 practices, and unfairly failed to pay these employees who were improperly classified as independent
15 contractors; and,

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

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

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

27 (i) Inconsistent or varying adjudications with respect to individual members
28 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties

1 opposing the CALIFORNIA CLASS; and/or,

2 (ii) Adjudication with respect to individual members of the CALIFORNIA
3 CLASS which would as a practical matter be dispositive of the interests of the other members not party
4 to the adjudication or substantially impair or impeded their ability to protect their interests.

5 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
6 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
7 CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the
8 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
9 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as
10 independent contractors, and thereby denied these employees' wages and payments for business
11 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

12 (i) With respect to the First Cause of Action, the final relief on behalf of the
13 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the
14 PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices constitute
15 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
16 declared to constitute unfair competition.

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

22 (i) The interest of the CALIFORNIA CLASS members in individually
23 controlling the prosecution or defense of separate actions;

24 (ii) The extent and nature of any litigation concerning the controversy already
25 commenced by or against members of the CALIFORNIA CLASS;

26 (iii) In the context of wage litigation because as a practical matter a substantial
27 number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear
28 of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or

1 with a subsequent employer, the Class Action is the only means to assert their claims through a
2 representative;

3 (iv) The desirability or undesirability of concentration the litigation of the
4 claims in the particular forum;

5 (v) The difficulties likely to be encountered in the management of a Class
6 Action; and,

7 (vi) The basis of DEFENDANT'S policies and practices applied to all the
8 CALIFORNIA CLASS members.

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

11 (a) The questions of law and fact common to the CALIFORNIA CLASS
12 predominate over any question affecting only individual members;

13 (b) A Class Action is superior to any other available method for the fair and efficient
14 adjudication of the claims of the members of the CALIFORNIA CLASS;

15 (c) The CALIFORNIA CLASS members are so numerous that it is impractical to
16 bring all CALIFORNIA CLASS members before the Court;

17 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able to obtain
18 effective and economic legal redress unless the action is maintained as a Class Action;

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

23 (f) There is a community of interest in ensuring that the combined assets and
24 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
25 CLASS members for any injuries sustained;

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

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

3 (i) Class treatment provides manageable judicial treatment calculated to bring an
4 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
5 DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

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

11 **THE CALIFORNIA LABOR SUB-CLASS**

12 48. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
13 Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
14 CLASS who are or previously were employed by DEFENDANT in California as independent
15 contractors (the "CALIFORNIA LABOR SUB-CLASS) at any time during the period three (3) years
16 prior 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 § 382. The
18 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
19 under five million dollars (\$5,000,000.00).

20 49. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation
21 of the applicable California Labor Code ("Labor Code"), and Industrial Welfare Commission ("IWC")
22 Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title alone and
23 without regard to the actual overall requirements of the job, systematically classified PLAINTIFF and
24 the other members of the CALIFORNIA LABOR SUBCLASS as independent contractors in order to
25 avoid the payment of all wages, and in order to avoid the obligations under the applicable California
26 Labor Code provisions. To the extent equitable tolling operates to toll claims by the CALIFORNIA
27 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
28 should be adjusted accordingly.

1 50. DEFENDANT maintain records from which the Court can ascertain and identify by job
2 title each of DEFENDANT’S employees who as CALIFORNIA LABOR SUB-CLASS Members
3 have been systematically, intentionally and uniformly misclassified as independent contractors as a
4 matter of DEFENDANT’s corporate policy, practices and procedures. PLAINTIFF will seek leave to
5 amend the complaint to include these additional job titles when they have been identified.

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

8 52. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
9 California law by:

10 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and
11 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
12 correct minimum wages for which DEFENDANT is liable;

13 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing
14 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
15 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
16 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

17 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
18 and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty,
19 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

20 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
21 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
22 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
23 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
24 of time worked at each hourly rate by the employee;

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

28 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an

1 employee is discharged or quits from employment, the employer must pay the employee all wages due
2 without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner
3 required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have
4 terminated their employment.

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

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

10 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
11 are raised in this Complaint are common to the CALIFORNIA LABOR 19 SUB-CLASS and will apply
12 to every member of the CALIFORNIA LABOR SUB-CLASS;

13 (c) The claims of the representative PLAINTIFF are typical of the claims of each
14 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the
15 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
16 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
17 DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the
18 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's
19 violations of the laws of California; and,

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

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

28 (a) Without class certification and determination of declaratory, injunctive,

1 statutory and other legal questions within the class format, prosecution of separate actions by individual
2 members of the CALIFORNIA LABOR SUBCLASS will create the risk of: 1) Inconsistent or varying
3 adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which
4 would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR
5 SUB-CLASS; or, 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
6 SUB-CLASS which would as a practical matter be dispositive of interests of the other members not
7 party to the adjudication or substantially impair or impede their ability to protect their interests.

8 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
9 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
10 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
11 that the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR
12 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
13 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as
14 independent contractors, and thereby denied these employees the protections afforded to them under
15 the California Labor Code;

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

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

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

28 A. Inconsistent or varying adjudications with respect to individual

1 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
2 of conduct for the DEFENDANT; and/or,

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

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

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

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

18 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
19 CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS
20 Members;

21 b) A Class Action is superior to any other available method for the fair and efficient
22 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
23 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
24 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
25 impact on their employment;

26 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
27 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

28 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,

1 will not be able to obtain effective and economic legal redress unless the action is maintained as a Class
2 Action;

3 (e) There is a community of interest in obtaining appropriate legal and equitable
4 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
5 adequate compensation for the damages and injuries which DEFENDANT'S actions have inflicted
6 upon the CALIFORNIA LABOR SUB-CLASS;

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

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

13 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
14 ascertainable from the business records of DEFENDANT; and,

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

18 **JURISDICTION AND VENUE**

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

23 57. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5,
24 because DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices
25 and facilities in this County and/or conducts substantial business in this County, and (ii) committed the
26 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and
27 CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful, Unfair and Deceptive Business Practices**

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

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

5 58. 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 Complaint.

7 59. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
8 17021.

9 60. Section 17200 of the California Business & Professions Code defines unfair competition
10 as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of
11 labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other
12 equitable relief with respect to unfair competition as follows:

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

21 California Business & Professions Code § 17203.

22 61. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
23 business practice which violates California law, including but not limited to the applicable Industrial
24 Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7, 226.8, 510, 512,
25 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which this Court
26 should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof § 17203,
27 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
28 restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the payment

1 of the employer's share of income taxes, social security taxes, unemployment insurance and workers'
2 compensation insurance.

3 62. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
4 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived
5 them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
6 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and injunctive relief is
7 necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would not
8 afford adequate and complete relief.

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

14 64. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
15 in that DEFENDANT's policy and practice was to represent to the CALIFORNIA CLASS Members
16 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
17 insurance and other benefits as required by California law, when in fact these representations were false
18 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
19 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

20 65. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
21 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members
22 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

23 66. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
24 do, seek such relief as may be necessary to restore to them the money and property which
25 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
26 CLASS have been deprived, by means of the above described unlawful and unfair business practices,
27 including earned but unpaid wages for all time worked.

28 67. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,

1 and do, seek a declaration that the described business practices were unlawful, unfair and deceptive,
2 and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful
3 and unfair business practices in the future.

4 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
5 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally
6 required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as
7 required by Cal. Lab. Code §§ 226.7 and 512.

8 69. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
9 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
10 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period
11 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday
12 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

13 70. PLAINTIFF further demands on behalf of herself and each member of the
14 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not timely
15 provided as required by law.

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

22 72. All the acts described herein as violations of, among other things, the Industrial Welfare
23 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, are
24 unlawful and in violation of public policy, are immoral, unethical, oppressive and unscrupulous, are
25 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
26 Bus. & Prof. Code §§ 17200 *et seq.*

27 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
28 do, seek such relief as may be necessary to restore to them the money and property which

1 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
2 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

3 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
4 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
5 that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and
6 unfair business practices in the future.

7 75. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
8 and/or adequate remedy at law that will end the unlawful and unfair business practices of
9 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result
10 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
11 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
12 harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair
13 business practices.

14 **SECOND CAUSE OF ACTION**

15 **For Failure to Pay Minimum Wages**

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

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

21 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
22 a claim for DEFENDANT'S willful and intentional violations of the California Labor Code and the
23 Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately calculate and
24 pay minimum wages to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members.

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

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

1 minimum so fixed in unlawful.

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

4 81. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked.
6 As set forth herein, DEFENDANT'S policy and practice was to unlawfully and intentionally deny
7 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
8 SUB-CLASS.

9 82. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
10 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
11 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

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

18 84. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
20 correct minimum wage compensation for their time worked for DEFENDANT.

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

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

1 87. DEFENDANT knew or should have known that PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
3 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
5 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure to Pay Overtime Wages**

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

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

5 90. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay
8 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they
9 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 &
10 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were regularly
11 required to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by
12 DEFENDANT’S business records and witnessed by DEFENDANT’S employees.

13 92. By virtue of DEFENDANT’S unlawful failure to pay compensation to PLAINTIFF and
14 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
15 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
16 economic in amounts which are presently unknown to them and which can be ascertained according to
17 proof at trial.

18 93. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
19 CLASS Members were misclassified as independent contractors and DEFENDANT elected, either
20 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
21 corporate policy, practice and procedure.

22 94. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
23 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
24 statutory penalties against DEFENDANT in a sum as provided by the California Labor Code and/or
25 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
26 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
27 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
28 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and

1 recover statutory costs.

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

10 **FOURTH CAUSE OF ACTION**

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

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

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **DEFENDANT)**

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

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

1 forfeited meal breaks without additional compensation and in accordance with DEFENDANT’S strict
2 corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

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

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

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

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

28 102. 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
2 Members who were not provided a rest period, in accordance with the applicable Wage Order, one
3 additional hour of compensation at each employee's regular rate of pay for each workday that rest
4 period was not provided.

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

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 DEFENDANT)**

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

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

22 106. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD,
23 DEFENDANT issued inaccurate itemized wages statements to PLAINTIFF and the members of the
24 CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2)
25 total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
26 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
27 (7) the name of the employee and only the last four digits of the employee's social security number or
28 an employee identification number other than a social security number, (8) the name and address of the

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

3 107. As a result, DEFENDANT issued PLAINTIFF and the other members of the
4 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
5 DEFENDANT'S violations are knowing and intentional, were not isolated or due to an unintentional
6 payroll error due to clerical or inadvertent mistake.

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

17 **SEVENTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code § 2802]**

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

21 109. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
22 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

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

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

1 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
2 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
3 required expenses incurred in the discharge of their job duties for DEFENDANT’S benefit. Specifically,
4 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
5 for expenses which included, but were not limited to, the cost associated with the use of their personal
6 cellular phones, personal equipment, and personal vehicles for DEFENDANT’S benefit. In order to
7 work for DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
8 required to use their personal vehicles to travel and to use DEFENDANT’S mobile application and as
9 such it is mandatory to have a cell phone that is compatible with DEFENDANT’S mobile application.
10 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other members of
11 the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which included,
12 but were not limited to, the costs related to the use of their personal cellular phones, personal equipment,
13 and personal vehicles all on behalf of and for the benefit of DEFENDANT. Further, PLAINTIFF and
14 other CALIFORNIA LABOR SUB-CLASS Members are also not reimbursed or indemnified by
15 DEFENDANT for the cost associated with using their personal vehicles while driving for
16 DEFENDANT. Moreover, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
17 were also required to provide their own cleaning supplies and equipment necessary to perform the
18 essential job duties. As a result, in the course of their employment with DEFENDANT, PLAINTIFF
19 and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business
20 expenses which included, but were not limited to, costs related to travel all on behalf of and for the
21 benefit of DEFENDANT. These expenses are necessary to complete their principal job duties.
22 DEFENDANT is estopped by DEFENDANT’S conduct to assert any waiver of this expectation.
23 Although these expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA
24 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
25 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do
26 under the laws and regulations of California.

27 112. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
28 them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for

1 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
2 and costs under Cal. Lab. Code § 2802.

3 **EIGHTH CAUSE OF ACTION**

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

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

6 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

10 114. Cal. Lab. Code § 200 states that:

11 As used in this article:

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

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

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

22 116. Cal. Lab. Code § 202 states, in relevant part, that:

23 If an employee not having a written contract for a definite period quits his
24 or her employment, his or her wages shall become due and payable not later
25 than 72 hours thereafter, unless the employee has given 72 hours previous
26 notice of his or her intention to quit, in which case the employee is entitled
27 to his or her wages at the time of quitting. Notwithstanding any other
28 provision of law, an employee who quits without providing a 72-hour notice

1 shall be entitled to receive payment by mail if he or she so requests and
2 designates a mailing address. The date of the mailing shall constitute the
3 date of payment for purposes of the requirement to provide payment
4 within 72 hours of the notice of quitting.

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

7 118. Cal. Lab. Code § 203 states:

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

14 119. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS
15 Members has terminated, yet as to those individuals whose employment terminated, DEFENDANT did
16 not timely tender payment of all wages owed as required by law.

17 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of
18 the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFF demands thirty
19 days of pay as penalty for not paying all wages due at time of termination for all individuals in the
20 CALIFORNIA LABOR SUB-CLASS who terminated employment during the CALIFORNIA LABOR
21 SUB-CLASS PERIOD plus interest and statutory costs as allowed.

22 **NINTH CAUSE OF ACTION**

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

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

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

26 121. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
27 the prior paragraphs of this Complaint.

1 122. PAGA is a mechanism by which the State of California itself can enforce state labor laws
2 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
3 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
4 enforcement action designed to protect the public and not to benefit private parties. The purpose of
5 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
6 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
7 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
8 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
9 PAGA claims cannot be subject to arbitration.

10 123. PLAINTIFF, and such persons that may be added from time to time who satisfy the
11 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
12 this Representative Action on behalf of the State of California with respect to themselves and all
13 individuals who worked for DEFENDANT in California as independent contractors during the time
14 period of January 28, 2021 until the present (the "AGGRIEVED EMPLOYEES").

15 124. On January 28, 2022, PLAINTIFF gave written notice by certified mail to the Labor and
16 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
17 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
18 hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these
19 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now
20 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State
21 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

22 125. The policies, acts and practices heretofore described were and are an unlawful business
23 act or practice because DEFENDANT misclassified Plaintiff and AGGRIEVED EMPLOYEES as
24 independent contractors, and therefore (a) failed to properly record and pay PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation of
26 the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide mandatory
27 meal breaks and rest breaks, (d) failed to pay meal and rest break premiums, (e) failed to timely pay
28 wages at the correct rate, all in violation of the applicable Labor Code sections listed in Labor Code
§2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226,

1 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199,
2 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties
3 as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
4 Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the
5 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and
8 severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

10 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
11 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

12 B) An order temporarily, preliminarily and permanently enjoining and restraining
13 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

14 C) An order requiring DEFENDANT to pay minimum and overtime wages and all
15 sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the
16 CALIFORNIA CLASS; and,

17 D) Restitutionary disgorgement of DEFENDANT'S ill-gotten gains into a fluid fund
18 for restitution of the sums incidental to DEFENDANT'S violations due to PLAINTIFF and to the other
19 members of the CALIFORNIA CLASS.

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

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

24 B) Compensatory damages, according to proof at trial, including compensation due
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
26 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

27 C) The wages of all terminated individuals in the CALIFORNIA LABOR SUB-
28 CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is

1 commenced, in accordance with Cal. Lab. Code § 203;

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

6 E) Meal and rest period compensation pursuant to California Labor Code Section
7 226.7 and the applicable IWC Wage Order;

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

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

11 3. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
13 General Act of 2004;

14 4. On all claims:


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

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

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

19
20 Dated: April 4, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.


21
22
23 By: 
24 Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: April 4, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 

Jean-Claude Lapuyade
Attorneys for PLAINTIFF

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EXHIBIT 1



January 28, 2022

**Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency**

Online Filing

HOMEAGLOW INC.

c/o Registered Agents Inc.

1401 21st Street, Suite R

Sacramento, CA 95811

Sent Via Certified Mail & Receipt No. 7021 2720 0000 9972 5450

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff JEANETTE GOMES (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant HOMEAGLOW INC. (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff worked for Defendant in California from October of 2021 to November of 2021. Plaintiff was classified by Defendant as an independent contractor, however the job duties performed by Plaintiff and other aggrieved employees did not entitle Defendant to claim any exemption from minimum wage and overtime compensation and providing meal periods to Plaintiff or any of the other workers who were classified as independent contractors. As a result, Plaintiff and other aggrieved employees worked time for which they were unlawfully not paid the correct minimum wage and overtime compensation. Further, Plaintiff and other aggrieved employees were not provided with the legally required meal and rest breaks in accordance with California law. 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.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates

the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees, exempt employees, and individuals classified as independent contractors who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) 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.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* 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 Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

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Attorneys for Plaintiff JEANETTE GOMES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN JOAQUIN

JEANETTE GOMES, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

HOMEAGLOW INC., a Delaware corporation; and DOES 1 through 30, Inclusive;

DEFENDANT.

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 WAGE STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;

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8. FAILURE TO PROVIDE WAGES WHEN DUE
IN VIOLATION OF CAL. LAB. CODE §§ 201,
202 AND 203.

DEMAND FOR JURY TRIAL

Plaintiff JEANETTE GOMES ("PLAINTIFF"), an individual, on behalf of herself and all other similarly situated current and former employees alleges on information and belief, except her own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF is an individual who works as a housekeeper in California for defendant HOMEAGLOW INC. ("DEFENDANT"). PLAINTIFF alleges that DEFENDANT has violated and continues to violate the California Labor Code protections applicable to California employees because DEFENDANT has misclassified its California employees as independent contractors. In order to provide services to their customers, DEFENDANT hires California workers to aid DEFENDANT in providing services in the usual course of DEFENDANT's on-demand home cleaning service business to their clients. DEFENDANT controlled and directed the work performed by PLAINTIFF and the other similarly situated misclassified California workers by, among other things, scheduling hours of work, providing job site information, and issuing written policies and procedures for the performance of work and conduct in the workplace. PLAINTIFF and the other similarly situated misclassified California workers are not and were not engaged in a customarily independently established trade, occupation or business as the same nature of the work performed. The costs, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay of these employees but the cost of the employer's share of tax payments to the federal and state governments for income taxes, social security taxes, Medicare insurance, unemployment insurance and payments for workers' compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to place the responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and other similarly situated California employees. As employer, DEFENDANT is legally responsible for the payment of all these expenses. This lawsuit is brought in order to collect the wages due to PLAINTIFF and all those similarly situated misclassified independent contractors as DEFENDANT's employees, the cost of

1 the employer's share of payments to the federal and state governments for income taxes, social
2 security taxes, Medicare insurance, unemployment insurance and payments for workers'
3 compensation insurance, plus penalties and interest.

4 **THE PARTIES**

5 2. DEFENDANT is a Delaware corporation, that at all relevant times mentioned herein
6 conducted and continues to conduct substantial business in the State of California, County of San
7 Joaquin, and provides home cleaning services.

8 3. DEFENDANT utilizes independent contractors, rather than employees, to provide its
9 clients with on-demand home cleaning services.

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

19 5. The agents, servants and/or employees of the DEFENDANT and each of them acting
20 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the
21 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
22 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
23 Consequently, the acts of DEFENDANT are legally attributable to the other and all DEFENDANTS
24 are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
25 proximate result of the conduct of the DEFENDANT's agents, servants and/or employees.

26 6. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
27 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
28 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating

1 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
2 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

3 7. DEFENDANT was PLAINTIFF’s employer or persons acting on behalf of
4 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
5 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
6 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
7 for each underpaid employee.

8 8. PLAINTIFF worked as a housekeeper for DEFENDANT from October of 2021 to
9 November of 2021 and was at all times during her employment classified by DEFENDANT as an
10 independent contractor.

11 9. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
12 individuals who worked for DEFENDANT in California as independent contractors (“CALIFORNIA
13 CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint
14 and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in
15 controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars
16 (\$5,000,000.00).

17 10. DEFENDANT’s uniform policies and practices alleged herein were unlawful, unfair
18 and deceptive business practices whereby DEFENDANT retained and continues to retain wages and
19 other benefits due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

20 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
21 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other
22 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT’s past
23 and current unlawful conduct, and all other appropriate legal and equitable relief.

24 THE CONDUCT

25 **A. Misclassification**

26 12. DEFENDANT engaged in a pattern and practice of misclassifying California workers
27 as independent contractors, hired to perform work and services core to DEFENDANT’s businesses, in
28 violation of California Labor Code Section 226.8. California Labor Code Section 226.8 provides that

1 “[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual
2 as an independent contractor.” The penalty for willful misclassification of employees is a “civil penalty
3 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
4 each violation, in addition to any other penalties or fines permitted by law.” It is further provided that,
5 in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the
6 penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five
7 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by
8 law.” Cal. Labor Code § 226.8.

9 13. Similarly, PLAINTIFF and other members of the CALIFORNIA CLASS were not
10 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
11 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and
12 other members of the CALIFORNIA CLASS were paid the hourly rate to perform labor services on
13 DEFENDANT’s behalf. PLAINTIFF and other workers were not compensated any other wages besides
14 the non-negotiable hourly rate, and they were not allowed to record their time while they waited for
15 DEFENDANT to give them work. DEFENDANT did not pay PLAINTIFF and other CALIFORNIA
16 CLASS members for the time spent driving to and from jobs, the materials required to perform the
17 jobs, and all the other time they spent working for DEFENDANT outside of the job assignment they
18 were placed at with DEFENDANT’s third-party customers. The finite set of tasks required to be
19 performed by the workers is, when notified via cell phone, travel to DEFENDANT’s customers to
20 perform jobs, including but not limited to, residential housekeeping, all in accordance with
21 DEFENDANT’s business practices and policies.

22 14. As a result, stripped of all the legal fictions and artificial barriers to an honest
23 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
24 CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the other members
25 of the CALIFORNIA CLASS are and were employees of DEFENDANT and not independent
26 contractors of DEFENDANT and should therefore be properly classified as non-exempt, hourly
27 employees.

28 15. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS

1 members as defined by DEFENDANT was executed by them through the performance of non-exempt
2 labor.

3 16. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
4 exempt labor subject to DEFENDANT's complete control over the manner and means of performance,
5 DEFENDANT instituted a blanket classification policy, practice and procedure by which all of these
6 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
7 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business
8 related expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members
9 were also required to pay DEFENDANT's share of payroll taxes and mandatory insurance premiums.
10 As a result of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF
11 and the other CALIFORNIA CLASS Members who performed this work for DEFENDANT,
12 DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition
13 law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy,
14 practice and procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA
15 CLASS members as employees and thereby failed to pay them wages for all time worked,
16 reimbursement of business related expenses, failed to provide them with meal and rest breaks, and
17 failed to reimburse these employees for the employer's share of payroll taxes and mandatory insurance.

18 17. DEFENDANT, as a matter of law, has the burden of proving that employees are
19 properly classified and that DEFENDANT otherwise complies with applicable laws. DEFENDANT,
20 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
21 Members as independent contractors in violation of the California Labor Code and regulations
22 promulgated thereunder.

23 i. **Plaintiff and Other Members of the California Class Were Not Free from**
24 **the Control and Direction of Defendant**

25 18. DEFENDANT controlled and directed the work performed by PLAINTIFF and the
26 other similarly situated misclassified California workers by, among other things, scheduling hours of
27 work, providing job site information, and issuing written policies and procedures for the performance
28 of work and conduct in the workplace. Upon hire, the position was represented by DEFENDANT to

1 PLAINTIFF and the other workers as an independent contractor position in exchange for an hourly rate
2 of pay for the time they spend providing labor and services to DEFENDANT's third-party customers.

3 19. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
4 CLASS perform work subject to the control of DEFENDANT in that DEFENDANT had the authority
5 to exercise complete control over the work performed and the manner and means in which the work
6 was performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
7 as to how to perform their work.

8 20. California Labor Code § 3357 defines "employee" as "every person in the service of an
9 employer under any appointment or contact of hire or apprenticeship, express or implied, oral or
10 written, whether lawfully or unlawfully employed." Additionally, to the California Labor Code's
11 presumption that workers are employees, the California Supreme Court has determined the most
12 significant factor to be considered in distinguishing an independent contractor from an employee is
13 whether the *employer or principal has control or the right to control the work both as to the work*
14 *performed and the manner and means in which the work is performed.* DEFENDANT heavily
15 controlled both the work performed and the manner and means in which the PLAINTIFF and other
16 workers performed their work in that:

17 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
18 involved in a distinct business, but instead were provided with instructions as to how to
19 perform their work and the manner and means in which the work was to be performed
20 by means of DEFENDANT and DEFENDANT's manuals and written instructions;

21 (b) PLAINTIFF and other members of the CALIFORNIA CLASS were
22 continuously provided with training and supervision, including following
23 DEFENDANT's company documents, and received training from DEFENDANT as to
24 how and in what way to perform the services;

25 (c) DEFENDANT set the requirements as to what policies and procedures all of the
26 workers were to follow, including but not limited to, hourly rates and location of
27 assignment;

28 (d) PLAINTIFF and other members of the CALIFORNIA CLASS had no

1 opportunity for profit or loss because DEFENDANT only paid these workers an hourly
2 rate. DEFENDANT controlled and assigned the workers which tasks were to be
3 performed;

4 (e) PLAINTIFF and other members of the CALIFORNIA CLASS performed
5 services and labor which are part of the core of DEFENDANT's principal business and
6 is closely integrated with and essential to the employer's business of services and labor
7 to their customers;

8 (f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the
9 work themselves and did not hire others to perform their work for them;

10 (g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the
11 authority to make employment-related personnel decisions;

12 (h) PLAINTIFF and other members of the CALIFORNIA CLASS performed their
13 work in a particular order and sequence in accordance with DEFENDANT and
14 DEFENDANT customers company policies; and,

15 (i) DEFENDANT had the "right" to control every critical aspect of DEFENDANT
16 labor operation in that DEFENDANT provided the customer, assigned where
17 PLAINTIFF and other members of the CALIFORNIA CLASS were to go, assigned
18 the hourly rate or flat rate, and step by step instructions to PLAINTIFF and other
19 members of the CALIFORNIA CLASS as to the entire process of working at their
20 assigned locations. PLAINTIFF and other workers provided services and labor for
21 DEFENDANT customers and were not actually in business for themselves.

22 ii. **Plaintiff and Other Members of the California Class Did Not Perform Work**
23 **Outside the Usual Course of Defendant's Business**

24 21. DEFENDANT willfully misclassified PLAINTIFF and other members of the
25 CALIFORNIA CLASS who provided DEFENDANT with housekeeping services for DEFENDANT's
26 clients. In other words, PLAINTIFF and other similarly situated California workers provided
27 DEFENDANT with work and services within the usual course of DEFENDANT's business.

28 22. DEFENDANT markets itself to the public, PLAINTIFF and other members of the

1 CALIFORNIA CLASS as a provider of on-demand house cleaning services. As a result, DEFENDANT
2 unquestionably holds itself out to the public, PLAINTIFF and other members of the CALIFORNIA
3 CLASS as a provider of on-demand housekeeping services. Therefore, the performance of
4 DEFENDANT's housekeeping services by PLAINTIFF and other members of the CALIFORNIA
5 CLASS is not outside DEFENDANT'S usual course of business.

6 **iii. Plaintiff and Other Members of the California Class Were Not Engaged in**
7 **an Independently Established Trade, Occupation, or Business of the Same**
8 **Nature as the Work Performed for Defendant**

9 23. PLAINTIFF and the other members of the CALIFORNIA CLASS are not and were not
10 engaged in a customarily independently established trade, occupation or business as the same nature of
11 the work performed.

12 **B. Meal Period Violations**

13 24. In California, an employer may not employ an employee for a work period of more than
14 five hours per day without providing the employee with a duty-free meal period of not less than thirty
15 minutes, except that if the total work period per day of the employee is no more than six hours, the
16 meal period may be waived by mutual consent of both the employer and employee. A second duty-free
17 meal period of not less than thirty minutes is required if an employee works more than ten hours per
18 day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period
19 may be waived by mutual consent of the employer and employee only if the first meal period was not
20 waived. Labor Code Section 512.

21 25. If an employer fails to provide an employee a duty-free meal period in accordance with
22 an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular
23 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
24 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

25 26. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
26 independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA
27 CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully
28 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were

1 required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours
2 during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
3 provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for
4 some workdays in which these employees were required by DEFENDANT to work ten (10) hours of
5 work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
6 without additional compensation and in accordance with DEFENDANT's strict corporate policy and
7 practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided
8 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

9 **C. Rest Period Violations**

10 27. The applicable IWC Wage Order requires that employers must authorize and permit
11 nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of
12 each work period. The rest period is based on the total hours worked daily and must be at the minimum
13 rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The
14 Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a
15 "major fraction" of four. A rest period is not required for employees whose total daily work time is less
16 than three and one-half hours. The rest period is counted as time worked and therefore, the employer
17 must pay for such periods.

18 28. If an employer fails to provide an employee a rest period in accordance with an applicable
19 IWC Order, the employer shall pay the employee one additional hour of pay at the employee's regular
20 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
21 an employer does not provide all of the rest periods required in a workday, the employee is entitled to
22 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
23 was not provided during that workday.

24 29. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
25 independent contractors and their rigorous work schedules PLAINTIFF and other CALIFORNIA
26 CLASS members were also required to work in excess of four (4) hours without being provided ten
27 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
28 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and

1 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
2 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
3 (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided
4 with one-hour wages in lieu thereof. As a result of their misclassification and rigorous work schedules,
5 PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time denied their proper
6 rest periods by DEFENDANT and DEFENDANT'S managers.

7 **D. Failure to Pay Minimum, Regular and Overtime Wages**

8 30. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately
9 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
10 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
11 is required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked, meaning
12 the time during which an employee was subject to the control of an employer, including all the time
13 the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and
14 CALIFORNIA CLASS members to work off the clock without paying them for all the time they were
15 under DEFENDANT's control. PLAINTIFF and other CALIFORNIA CLASS Members also worked
16 more than eight hours in a workday and/or forty hours in a workweek, but DEFENDANT failed to pay
17 these employees overtime pay as DEFENDANT only paid a flat rate or a flat hourly rate for all time
18 worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum
19 wages and overtime wage compensation by working without their time being correctly recorded and
20 without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
21 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
22 DEFENDANT's business records. As a result, DEFENDANT failed to compensate PLAINTIFF and
23 the members of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours
24 worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

25 **E. Failure to Reimburse Necessary and Required Business Expenses**

26 31. Under California Labor Code Section 2802, employers are required to indemnify
27 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
28 2802 expressly states that "an employer shall indemnify his or her employee for all necessary

1 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
2 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
3 employee, at the time of obeying the directions, believed them to be unlawful."

4 32. From time-to-time during the CLASS PERIOD, DEFENDANT as a matter of corporate
5 policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and
6 indemnify PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
7 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
8 behalf of DEFENDANT.

9 33. From time-to-time during the CLASS PERIOD, in the course of their employment
10 PLAINTIFF and other CALIFORNIA CLASS members as a business expense, were required by
11 DEFENDANT to use personal cellular phones, personal vehicles, and personal equipment as a result
12 of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed or
13 indemnified by DEFENDANT for the cost associated with the use of the personal cellular phones,
14 personal equipment, and personal vehicles for DEFENDANT's benefit. In order to work for
15 DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members were required to use their
16 personal vehicles to travel to different locations each work shift and were also required to use their
17 personal cell phones to review, receive and accept job assignments and as such it is mandatory to have
18 a cell phone. Additionally, PLAINTIFF and other CALIFORNIA CLASS Members were required to
19 provide their own personal equipment and supplies needed to perform the essential job cleaning duties.
20 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other members of
21 the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
22 limited to, costs related to the use of their personal cellular phones, personal equipment, and personal
23 vehicle on behalf of and for the benefit of DEFENDANT.

24 **F. Wage Statement Violations**

25 34. California Labor Code Section 226 requires an employer to furnish its employees an
26 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
27 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
28 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the

1 employee and only the last four digits of the employee's social security number or an employee
2 identification number other than a social security number, (8) the name and address of the legal entity
3 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee.

5 35. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of
6 DEFENDANT's intentional and willful misclassification of PLAINTIFF and the members of the
7 CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT issued
8 inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS
9 that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
10 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the
11 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
12 last four digits of the employee's social security number or an employee identification number other
13 than a social security number, (8) the name and address of the legal entity that is the employer and, (9)
14 all applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee.

16 36. As a result, DEFENDANT issued PLAINTIFF and the other members of the
17 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
18 DEFENDANT's violations are knowing and intentional, were not isolated or due to an unintentional
19 payroll error due to clerical or inadvertent mistake.

20 **G. Unfair Competition**

21 37. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS
22 members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
23 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
24 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
25 CALIFORNIA CLASS members as employees. The proper classification of these employees is
26 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
27 this burden, DEFENDANT failed to pay all required wages for work performed by PLAINTIFF and
28 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations

1 promulgated thereunder as herein alleged.

2 38. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an
3 independent contractor and thus did not receive pay for all time worked, including minimum and
4 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
5 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
6 a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited
7 meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict
8 corporate policy and practice which did not provide for mandatory meal and rest breaks. To date,
9 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty wages owed
10 to her under California Labor Code § 203. The amount in controversy for PLAINTIFF individually
11 does not exceed the sum or value of \$75,000.

12 THE CALIFORNIA CLASS

13 39. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
14 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
15 pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the
16 CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
17 Members is under five million dollars (\$5,000,000.00).

18 40. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
19 against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

20 41. All CALIFORNIA CLASS members who performed and continue to perform this work
21 for DEFENDANT during the CLASS PERIOD are similarly situated in that they are subject to
22 DEFENDANT's policy and practice that required them to perform work without compensation as
23 required by law.

24 42. During the CLASS PERIOD, DEFENDANT violated the rights of the PLAINTIFF and
25 the CALIFORNIA CLASS members under California law, without limitation, in the following
26 manners:

27 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
28 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer, devised and implemented

1 a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully,
2 unfairly and deceptively shoulder the cost of DEFENDANT'S wages for all unpaid wages, business
3 related expenses, and DEFENDANT's share of employment taxes, social security taxes, unemployment
4 insurance and workers' compensation insurance;

5 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
6 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,
7 practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS
8 members as independent contractors;

9 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
10 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company
11 policy, practice and procedure that accurately determined the amount of working time spent by
12 PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

13 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
14 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
15 CALIFORNIA CLASS with all legally required meal and rest breaks;

16 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
17 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
18 the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job
19 duties; and,

20 (f) Committing an act of unfair competition in violation of the UCL, by violating
21 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the
22 members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the
23 unpaid overtime to the benefit of DEFENDANT.

24 43. As a result of DEFENDANT's policies, practices and procedures, there are numerous
25 questions of law and fact common to all CALIFORNIA CLASS members who worked for during the
26 CLASS PERIOD. These questions include, but are not limited, to the following:

27 (a) Whether PLAINTIFF and other CALIFORNIA CLASS members were
28 misclassified as independent contractors by DEFENDANT;

1 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded
2 all the protections of the California Labor Code that apply when properly classified as non-exempt
3 employees;

4 (c) Whether DEFENDANT's policies, practices and pattern of conduct described in
5 this Complaint was and is unlawful;

6 (d) Whether DEFENDANT unlawfully failed to pay their share of state and federal
7 employment taxes as required by state and federal tax laws;

8 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
9 CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all
10 time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable
11 provisions of California State law;

12 (f) Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA
13 CLASS members with accurate records of all time worked;

14 (g) Whether DEFENDANT has engaged in unfair competition by the above-listed
15 conduct; and,

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

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

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

22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
23 raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every
24 CALIFORNIA CLASS member;

25 (c) The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was
27 classified as an independent contractor upon hiring based on the defined corporate policies and practices
28 and labors under DEFENDANT'S procedure that failed to properly classify the PLAINTIFF and the

1 CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of DEFENDANT's
2 employment practices. PLAINTIFF and the CALIFORNIA CLASS members were and are similarly or
3 identically harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct
4 engaged in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS members that they
5 were not entitled to minimum wages, the employer's share of payment of payroll taxes and mandatory
6 insurance, and reimbursement for business expenses based on the defined corporate policies and
7 practices, and unfairly failed to pay these employees who were improperly classified as independent
8 contractors; and,

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

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

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

20 (i) Inconsistent or varying adjudications with respect to individual members
21 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties
22 opposing the CALIFORNIA CLASS; and/or,

23 (ii) Adjudication with respect to individual members of the CALIFORNIA
24 CLASS which would as a practical matter be dispositive of the interests of the other members not party
25 to the adjudication or substantially impair or impeded their ability to protect their interests.

26 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
27 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
28 CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the

1 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
2 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as
3 independent contractors, and thereby denied these employees' wages and payments for business
4 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

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

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

15 (i) The interest of the CALIFORNIA CLASS members in individually
16 controlling the prosecution or defense of separate actions;

17 (ii) The extent and nature of any litigation concerning the controversy already
18 commenced by or against members of the CALIFORNIA CLASS;

19 (iii) In the context of wage litigation because as a practical matter a substantial
20 number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear
21 of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or
22 with a subsequent employer, the Class Action is the only means to assert their claims through a
23 representative;

24 (iv) The desirability or undesirability of concentration the litigation of the
25 claims in the particular forum;

26 (v) The difficulties likely to be encountered in the management of a Class
27 Action; and,

28 (vi) The basis of DEFENDANT'S policies and practices applied to all the

1 CALIFORNIA CLASS members.

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

4 (a) The questions of law and fact common to the CALIFORNIA CLASS
5 predominate over any question affecting only individual members;

6 (b) A Class Action is superior to any other available method for the fair and efficient
7 adjudication of the claims of the members of the CALIFORNIA CLASS;

8 (c) The CALIFORNIA CLASS members are so numerous that it is impractical to
9 bring all CALIFORNIA CLASS members before the Court;

10 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able to obtain
11 effective and economic legal redress unless the action is maintained as a Class Action;

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

16 (f) There is a community of interest in ensuring that the combined assets and
17 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
18 CLASS members for any injuries sustained;

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

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

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

27 47. DEFENDANT maintain records from which the Court can ascertain and identify by
28 name and job title, each of DEFENDANT's employees who have been intentionally subjected to

1 DEFENDANT’s corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek
2 leave to amend the complaint to include any additional job titles of similarly situated employees when
3 they have been identified.

4 **THE CALIFORNIA LABOR SUB-CLASS**

5 48. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
6 Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
7 CLASS who are or previously were employed by DEFENDANT in California as independent
8 contractors (the “CALIFORNIA LABOR SUB-CLASS) at any time during the period three (3) years
9 prior to the filing of the Complaint and ending on the date as determined by the Court (the
10 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc § 382. The
11 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
12 under five million dollars (\$5,000,000.00).

13 49. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation
14 of the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission (“IWC”)
15 Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title alone and
16 without regard to the actual overall requirements of the job, systematically classified PLAINTIFF and
17 the other members of the CALIFORNIA LABOR SUBCLASS as independent contractors in order to
18 avoid the payment of all wages, and in order to avoid the obligations under the applicable California
19 Labor Code provisions. To the extent equitable tolling operates to toll claims by the CALIFORNIA
20 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
21 should be adjusted accordingly.

22 50. DEFENDANT maintain records from which the Court can ascertain and identify by job
23 title each of DEFENDANT’S employees who as CALIFORNIA LABOR SUB-CLASS Members
24 have been systematically, intentionally and uniformly misclassified as independent contractors as a
25 matter of DEFENDANT’s corporate policy, practices and procedures. PLAINTIFF will seek leave to
26 amend the complaint to include these additional job titles when they have been identified.

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

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

3 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and
4 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
5 correct minimum wages for which DEFENDANT is liable;

6 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing
7 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
8 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
9 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

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

13 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
14 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
15 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
16 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
17 of time worked at each hourly rate by the employee;

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

21 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
22 employee is discharged or quits from employment, the employer must pay the employee all wages due
23 without abatement, by failing to 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 SUB-CLASS who have
25 terminated their employment.

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

28 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so

1 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and
2 the disposition of their claims as a class will benefit the parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
4 are raised in this Complaint are common to the CALIFORNIA LABOR 19 SUB-CLASS and will apply
5 to every member of the CALIFORNIA LABOR SUB-CLASS;

6 (c) The claims of the representative PLAINTIFF are typical of the claims of each
7 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the
8 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
9 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
10 DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the
11 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's
12 violations of the laws of California; and,

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

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

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

1 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
2 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
3 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
4 that the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR
5 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
6 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as
7 independent contractors, and thereby denied these employees the protections afforded to them under
8 the California Labor Code;

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

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

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

21 A. Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
23 of 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 matter be dispositive of the interests of the
26 other members not parties to the adjudication or substantially impair or impede their ability to protect
27 their interests;

28 iii) In the context of wage litigation because a substantial number of

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

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

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

11 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
12 CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS
13 Members;

14 b) A Class Action is superior to any other available method for the fair and efficient
15 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
16 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
17 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
18 impact on their employment;

19 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
20 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

21 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,
22 will not be able to obtain effective and economic legal redress unless the action is maintained as a Class
23 Action;

24 (e) There is a community of interest in obtaining appropriate legal and equitable
25 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
26 adequate compensation for the damages and injuries which DEFENDANT'S actions have inflicted
27 upon the CALIFORNIA LABOR SUB-CLASS;

28 (f) There is a community of interest in ensuring that the combined assets of

1 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR
2 SUB-CLASS for the injuries sustained;

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

6 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
7 ascertainable from the business records of DEFENDANT; and,

8 (i) Class treatment provides manageable judicial treatment calculated to bring a
9 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
10 conduct of DEFENDANT.

11 **JURISDICTION AND VENUE**

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

16 57. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5,
17 because DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices
18 and facilities in this County and/or conducts substantial business in this County, and (ii) committed the
19 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and
20 CALIFORNIA LABOR SUB-CLASS.

21
22 ///

23
24 **FIRST CAUSE OF ACTION**

25 **For Unlawful, Unfair and Deceptive Business Practices**

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

27 **(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANT)**

28 58. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and

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

2 59. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
3 17021.

4 60. Section 17200 of the California Business & Professions Code defines unfair competition
5 as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of
6 labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other
7 equitable relief with respect to unfair 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
10 court may take such orders or judgments, including the appointment of a
11 receiver, as may be necessary to prevent the use or employment by any
12 person of any practice which constitutes unfair competition, as defined in
13 this chapter, or as may be necessary to restore to any person in interest any
14 money or property, real or personal, which may have been acquired by
15 means of such unfair competition.

16 California Business & Professions Code § 17203.

17 61. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
18 business practice which violates California law, including but not limited to the applicable Industrial
19 Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7, 226.8, 510, 512,
20 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which this Court
21 should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof § 17203,
22 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
23 restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the payment
24 of the employer's share of income taxes, social security taxes, unemployment insurance and workers'
25 compensation insurance.

26 62. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
27 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived
28 them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of

1 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and injunctive relief is
2 necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would not
3 afford adequate and complete relief.

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

9 64. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
10 in that DEFENDANT's policy and practice was to represent to the CALIFORNIA CLASS Members
11 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
12 insurance and other benefits as required by California law, when in fact these representations were false
13 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
14 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

23 67. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
24 and do, seek a declaration that the described business practices were unlawful, unfair and deceptive,
25 and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful
26 and unfair business practices in the future.

27 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
28 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally

1 required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as
2 required by Cal. Lab. Code §§ 226.7 and 512.

3 69. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
5 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period
6 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday
7 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

8 70. PLAINTIFF further demands on behalf of herself and each member of the
9 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not timely
10 provided as required by law.

11 71. By and through the unlawful and unfair business practices described herein,
12 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other
13 members of the CALIFORNIA CLASS, including earned wages for all time worked and has deprived
14 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
15 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
16 against competitors who comply with the law.

17 72. All the acts described herein as violations of, among other things, the Industrial Welfare
18 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, are
19 unlawful and in violation of public policy, are immoral, unethical, oppressive and unscrupulous, are
20 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
21 Bus. & Prof. Code §§ 17200 *et seq.*

22 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
23 do, seek such relief as may be necessary to restore to them the money and property which
24 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
25 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

26 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
27 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
28 that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and

1 unfair business practices in the future.

2 75. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
3 and/or adequate remedy at law that will end the unlawful and unfair business practices of
4 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result
5 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
6 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
7 harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair
8 business practices.

9 **SECOND CAUSE OF ACTION**

10 **For Failure to Pay Minimum Wages**

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

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

13 76. 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 of this
15 Complaint.

16 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
17 a claim for DEFENDANT'S willful and intentional violations of the California Labor Code and the
18 Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately calculate and
19 pay minimum wages to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

27 81. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members
28 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked.

1 As set forth herein, DEFENDANT’S policy and practice was to unlawfully and intentionally deny
2 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
3 SUB-CLASS.

4 82. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
6 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

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

13 84. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
15 correct minimum wage compensation for their time worked for DEFENDANT.

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

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

24 87. DEFENDANT knew or should have known that PLAINTIFF and the other members of
25 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
26 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
27 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
28 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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24 **THIRD CAUSE OF ACTION**

25 **For Failure to Pay Overtime Wages**

26 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

27 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

28 90. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members reallege and

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

2 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay
3 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they
4 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 &
5 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were regularly
6 required to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by
7 DEFENDANT’S business records and witnessed by DEFENDANT’S employees.

8 92. By virtue of DEFENDANT’S unlawful failure to pay compensation to PLAINTIFF and
9 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
11 economic in amounts which are presently unknown to them and which can be ascertained according to
12 proof at trial.

13 93. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
14 CLASS Members were misclassified as independent contractors and DEFENDANT elected, either
15 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
16 corporate policy, practice and procedure.

17 94. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
18 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
19 statutory penalties against DEFENDANT in a sum as provided by the California Labor Code and/or
20 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
21 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
22 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
23 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and
24 recover statutory costs.

25 95. In performing the acts and practices herein alleged in violation of California labor laws,
26 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
27 worked and provide them with the requisite overtime compensation, DEFENDANT acted and
28 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their
2 legal rights, or the consequences to them, and with the despicable intent of depriving them of their
3 property and legal rights, and otherwise causing them injury in order to increase corporate profits at the
4 expense of these employees.

5 **FOURTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

8 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
9 **DEFENDANT)**

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

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

26 98. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC
27 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
28 Members who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a meal
2 period was not provided.

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

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 DEFENDANT)**

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

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

23 102. 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
24 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
25 Members who were not provided a rest period, in accordance with the applicable Wage Order, one
26 additional hour of compensation at each employee's regular rate of pay for each workday that rest
27 period was not provided.

28 103. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA

1 LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek
2 all wages earned and due, interest, penalties, expenses and costs of suit.

3 **SIXTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 226]**

6 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

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

17 106. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD,
18 DEFENDANT issued inaccurate itemized wages statements to PLAINTIFF and the members of the
19 CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2)
20 total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
21 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
22 (7) the name of the employee and only the last four digits of the employee's social security number or
23 an employee identification number other than a social security number, (8) the name and address of the
24 legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
25 the corresponding number of hours worked at each hourly rate by the employee.

26 107. As a result, DEFENDANT issued PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
28 DEFENDANT'S violations are knowing and intentional, were not isolated or due to an unintentional

1 payroll error due to clerical or inadvertent mistake.

2 108. DEFENDANT knowingly and intentionally failed to comply with Labor Code § 226,
3 causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS.
4 These damages include, but are not limited to, costs expended calculating the true amount of time
5 worked and the amount of employment taxes which were not properly paid to state and federal tax
6 authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members
7 of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the
8 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay
9 period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no
10 event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR
11 SUB-CLASS herein).

12 **SEVENTH 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 DEFENDANT)**

16 109. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
17 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

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

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

24 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
25 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
26 required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. Specifically,
27 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
28 for expenses which included, but were not limited to, the cost associated with the use of their personal

1 cellular phones, personal equipment, and personal vehicles for DEFENDANT’S benefit. In order to
2 work for DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
3 required to use their personal vehicles to travel and to use DEFENDANT’S mobile application and as
4 such it is mandatory to have a cell phone that is compatible with DEFENDANT’S mobile application.
5 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other members of
6 the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which included,
7 but were not limited to, the costs related to the use of their personal cellular phones, personal equipment,
8 and personal vehicles all on behalf of and for the benefit of DEFENDANT. Further, PLAINTIFF and
9 other CALIFORNIA LABOR SUB-CLASS Members are also not reimbursed or indemnified by
10 DEFENDANT for the cost associated with using their personal vehicles while driving for
11 DEFENDANT. Moreover, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
12 were also required to provide their own cleaning supplies and equipment necessary to perform the
13 essential job duties. As a result, in the course of their employment with DEFENDANT, PLAINTIFF
14 and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business
15 expenses which included, but were not limited to, costs related to travel all on behalf of and for the
16 benefit of DEFENDANT. These expenses are necessary to complete their principal job duties.
17 DEFENDANT is estopped by DEFENDANT’S conduct to assert any waiver of this expectation.
18 Although these expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA
19 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
20 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do
21 under the laws and regulations of California.

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

26 **EIGHTH CAUSE OF ACTION**

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

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

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

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

5 114. Cal. Lab. Code § 200 states that:

6 As used in this article:

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

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

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

17 116. Cal. Lab. Code § 202 states, in relevant part, that:

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

28 117. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR SUB-

1 CLASS Members' employment contract.

2 118. Cal. Lab. Code § 203 states:

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

9 119. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS
10 Members has terminated, yet as to those individuals whose employment terminated, DEFENDANT did
11 not timely tender payment of all wages owed as required by law.

12 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of
13 the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFF demands thirty
14 days of pay as penalty for not paying all wages due at time of termination for all individuals in the
15 CALIFORNIA LABOR SUB-CLASS who terminated employment during the CALIFORNIA LABOR
16 SUB-CLASS PERIOD plus interest and statutory costs as allowed.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and
19 severally, as follows:

20 1. On behalf of the CALIFORNIA CLASS:

21 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
22 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

23 B) An order temporarily, preliminarily and permanently enjoining and restraining
24 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

25 C) An order requiring DEFENDANT to pay minimum and overtime wages and all
26 sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS; and,

28 D) Restitutionary disgorgement of DEFENDANT'S ill-gotten gains into a fluid fund

1 for restitution of the sums incidental to DEFENDANT’S violations due to PLAINTIFF and to the other
2 members of the CALIFORNIA CLASS.

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

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

7 B) Compensatory damages, according to proof at trial, including compensation due
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
9 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

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

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

17 E) Meal and rest period compensation pursuant to California Labor Code Section
18 226.7 and the applicable IWC Wage Order;

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

21 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.
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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: January 28, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: January 28, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Homeagion, Inc.
 c/o Registered Agents, Inc.
 1401 21st St., Suite R
 Sacramento, CA 95811



9590 9402 7020 1225 2851 81

2. Article Number (Transfer from service label)

7021 2720 0000 9972 5450

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A. Signature

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C. Date of Delivery

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