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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
IN AND FOR THE COUNTY OF COUNTY OF SACRAMENTO

12 MICHAEL MURPHY, an individual, on
13 behalf of himself and on behalf of all persons
14 similarly situated,

15 Plaintiff,

16 v.

17 ROCKLER RETAIL GROUP, INC., a
Corporation; and DOES 1 through 50,
18 Inclusive,

19 Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 3) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 7) FAILURE TO PROVIDE PERSONNEL FILES IN VIOLATION OF CAL. LAB. CODE § 1198.5;
- 8) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and
- 9) RETALIATION IN VIOLATION OF CAL. LAB. CODE § 1102.5

DEMAND FOR A JURY TRIAL

FILED
Superior Court Of California,
Sacramento
09/25/2018
jmore
By _____, Deputy
Case Number:
34-2018-00241374

BY FAX

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant Rockler Retail Group, Inc. (“DEFENDANT”) is a corporation and at
7 all relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout California.

9 2. DEFENDANT supplies specialty hardware, tools and other woodworking
10 products. DEFENDANT has thirty-seven retail location nationwide, seven of which are in
11 California.

12 3. Plaintiff was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from August 2015 to March 2018.
14 Plaintiff was at all times relevant mentioned herein classified by DEFENDANT as a non-
15 exempt employee paid in whole or in part on an hourly basis and received additional
16 compensation from DEFENDANT in the form of non-discretionary incentive wages.

17 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
18 defined as all individuals who are or previously were employed by DEFENDANT in California
19 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
20 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
21 determined by the Court (the “CALIFORNIA CLASS PERIOD”).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
25 which failed to lawfully compensate these employees for all their overtime worked.
26 DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and deceptive
27 business practice whereby DEFENDANT retained and continues to retain wages due to
28 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by

1 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
2 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
3 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

21 **THE CONDUCT**

22 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
23 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
24 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to
25 accurately calculate wages for overtime worked by PLAINTIFFS and other members of the
26 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
27 compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
28 forfeited wages due to them for working overtime without compensation at the correct overtime

1 rates. DEFENDANT's uniform policy and practice to not pay the members of the
2 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
3 applicable law is evidenced by DEFENDANT's business records.

4 9. State law provides that employees must be paid overtime at one-and-one-
5 halftimes their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members
6 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
7 employee's performance.

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

22 11. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
24 matter of company policy, practice and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct
26 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
27 intended to purposefully avoid the payment of the correct overtime compensation as required by
28 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage

1 over competitors who complied with the law. To the extent equitable tolling operates to toll
2 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
3 PERIOD should be adjusted accordingly.

4 12. As a result of their rigorous work schedules, PLAINTIFF and other
5 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
6 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
7 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
8 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
9 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
10 second off-duty meal period each workday in which these employees were required by
11 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
12 CLASS Members therefore forfeited meal breaks without additional compensation and in
13 accordance with DEFENDANT's strict corporate policy and practice

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

25 14. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
26 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
27 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
28 CLASS with complete and accurate wage statements which failed to show, among other things,

1 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
2 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
3 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
4 furnish each of his or her employees with an accurate itemized wage statement in writing
5 showing, among other things, gross wages earned and all applicable hourly rates in effect during
6 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
7 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
8 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
9 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
10 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

11 15. DEFENDANT also violated Cal. Lab. Code Section 1198.5 by failing to respond
12 and provide Plaintiff with his employment file. Section 1198.5 states that employees (and
13 former employees) have the right to inspect personnel records maintained by the employer
14 “related to the employee’s performance or to any grievance concerning the employee.”
15 Employers must allow inspection or copying within thirty (30) days of the request. Plaintiff
16 requested his employment file via certified mail and DEFENDANT failed to respond. As a
17 result, Plaintiff is now entitled to a statutory penalty of \$750 and an award of attorneys’ fees and
18 costs for bringing this action.

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

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

3 18. Specifically as to PLAINTIFF, on or around February 13, 2018 PLAINTIFF
4 discovered that his supervisor (Brad McTeer) used his son to perform work at the store rather
5 than use one of DEFENDANT’s employees. Mr. McTeer’s son was not an employee of
6 DEFENDANT. PLAINTIFF contacted DEFENDANT’s Regional Manager—the next higher
7 person in command—to inform DEFENDANT that Mr. McTeer used his son to perform work at
8 DEFENDANT’s store rather than use one of Defendant’s employees, informing him that he
9 believed this was illegal in violation the law and company policy. PLAINTIFF was concerned
10 that Mr. McTeer employed his own son improperly and illegally in violation of California and
11 Federal laws, in that he was not on DEFENDANT’s payroll and would not be covered by
12 DEFENDANT’s insurance should an accident occur at the store. PLAINTIFF also believed that
13 Mr. McTeer may be illegally paying his son “under the table.” DEFENDANT’s Regional
14 Manager admitted to PLAINTIFF that this was inappropriate and promised to talk to Mr.
15 McTeer. Subsequently, on or around February 16, 2018, PLAINTIFF spoke to Mr. McTeer
16 about the incident, and Mr. McTeer explained to him that “his son was going through a tough
17 time and needed the work.” PLAINTIFF later heard that DEFENDANT’s Regional Manager
18 discussed the matter with Mr. McTeer.

19 19. Beginning February 16, 2018 and up until March 9, 2018, when PLAINTIFF was
20 terminated, Mr. McTeer stopped assigning managerial tasks to PLAINTIFF. Mr. McTeer’s
21 treatment of PLAINTIFF from that point on became generally negative. On March 9, 2018 Mr.
22 McTeer suspended PLAINTIFF. The reason provided to PLAINTIFF for the suspension was
23 PLAINTIFF’s “insubordination” during an incident in which PLAINTIFF instructed an
24 employee of DEFENDANT who was PLAINTIFF’s subordinate to cover the store’s front desk.
25 PLAINTIFF was not warned or written up and was not provided any written documents in
26 connection with his suspension. Between March 9, 2018 and March 15, 2018, PLAINTIFF
27 attempted multiple times, without success, to contact DEFENDANT to discuss his suspension.
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1 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

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

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

25 27. DEFENDANT has the legal burden to establish that each and every
26 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
27 accurately calculate the “regular rate of pay” by including the incentive compensation that
28 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.

1 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
2 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
3 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
4 overtime rate for all overtime worked, so as to satisfy their burden. This common business
5 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
6 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
7 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
8 claim.

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

16 29. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
17 CLASS Members is impracticable.

18 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
19 California law by:

- 20 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
21 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
22 company policies, practices and procedures that failed to pay all wages due the
23 CALIFORNIA CLASS for all overtime worked, and failed to accurately record
24 the applicable rates of all overtime worked by the CALIFORNIA CLASS;
- 25 b. Committing an act of unfair competition in violation of the California Unfair
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
27 unfairly, and/or deceptively having in place a company policy, practice and
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1 procedure that failed to correctly calculate overtime compensation due to
2 PLAINTIFF and the members of the CALIFORNIA CLASS; and

3 c. Committing an act of unfair competition in violation of the California Unfair
4 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
5 provide mandatory meal and/or rest breaks to PLAINTIFF and the
6 CALIFORNIA CLASS members.

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

9 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
10 joinder of all such persons is impracticable and the disposition of their claims as
11 a class will benefit the parties and the Court;

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

15 c. The claims of the representative PLAINTIFF are typical of the claims of each
16 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
17 of the CALIFORNIA CLASS, was subjected to the uniform employment
18 practices of DEFENDANT and was a non-exempt employee paid on an hourly
19 basis and paid additional non-discretionary incentive wages who was subjected
20 to the DEFENDANT's practice and policy which failed to pay the correct rate of
21 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
22 CALIFORNIA CLASS and thereby systematically under pays overtime
23 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
24 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
25 members of the CALIFORNIA CLASS were and are similarly or identically
26 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
27 misconduct engaged in by DEFENDANT; and
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1 d. The representative PLAINTIFF will fairly and adequately represent and protect
2 the interest of the CALIFORNIA CLASS, and has retained counsel who are
3 competent and experienced in Class Action litigation. There are no material
4 conflicts between the claims of the representative PLAINTIFF and the members
5 of the CALIFORNIA CLASS that would make class certification inappropriate.
6 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
7 CALIFORNIA CLASS Members.

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

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

13 i. Inconsistent or varying adjudications with respect to individual members
14 of the CALIFORNIA CLASS which would establish incompatible
15 standards of conduct for the parties opposing the CALIFORNIA CLASS;
16 and/or;

17 ii. Adjudication with respect to individual members of the CALIFORNIA
18 CLASS which would as a practical matter be dispositive of interests of
19 the other members not party to the adjudication or substantially impair or
20 impede their ability to protect their interests.

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

27 i. With respect to the First Cause of Action, the final relief on behalf of the
28 CALIFORNIA CLASS sought does not relate exclusively to restitution

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because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANT’s policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

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

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

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

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

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

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

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

25
26 35. PLAINTIFF further brings the Second, Third, Fourth Fifth and Sixth causes of
27 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
28 CLASS classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at

1 any time during the period three (3) years prior to the filing of the complaint and ending on the
2 date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”)
3 pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

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

- 26 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
27 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
28

1 violation of the California Labor Code and California regulations and the
2 applicable California Wage Order;

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

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

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

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

15 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
16 conduct;

17 g. The proper measure of damages and penalties owed to the members of the
18 CALIFORNIA LABOR SUB-CLASS; and

19 h. Whether DEFENDANT's conduct was willful.

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

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

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

7 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
8 and the other members of the CALIFORNIA CLASS with all legally required
9 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
10 rest breaks;

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

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

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

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

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

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

- 26 a. Without class certification and determination of declaratory, injunctive, statutory
27 and other legal questions within the class format, prosecution of separate actions
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1 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
2 the risk of:

3 i. Inconsistent or varying adjudications with respect to individual members
4 of the CALIFORNIA LABOR SUB-CLASS which would establish
5 incompatible standards of conduct for the parties opposing the
6 CALIFORNIA LABOR SUB-CLASS; or

7 ii. Adjudication with respect to individual members of the CALIFORNIA
8 LABOR SUB-CLASS which would as a practical matter be dispositive of
9 interests of the other members not party to the adjudication or
10 substantially impair or impede their ability to protect their interests.

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

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

24 i. The interests of the members of the CALIFORNIA LABOR SUB-
25 CLASS in individually controlling the prosecution or defense of separate
26 actions in that the substantial expense of individual actions will be
27 avoided to recover the relatively small amount of economic losses
28 sustained by the individual CALIFORNIA LABOR SUB-CLASS

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Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
2 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
3 PERIOD; and

- 4 i. Class treatment provides manageable judicial treatment calculated to bring an
5 efficient and rapid conclusion to all litigation of all wage and hour related claims
6 arising out of the conduct of DEFENDANT as to the members of the
7 CALIFORNIA LABOR SUB-CLASS.

8 **FIRST CAUSE OF ACTION**

9 **UNLAWFUL BUSINESS PRACTICES**

10 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

11 (Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

15 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
16 Code § 17021.

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

21 Any person who engages, has engaged, or proposes to engage in unfair competition
22 may be enjoined in any court of competent jurisdiction. The court may make such orders or
23 judgments, including the appointment of a receiver, as may be necessary to prevent the use or
24 employment by any person of any practice which constitutes unfair competition, as defined in
25 this chapter, or as may be necessary to restore to any person in interest any money or property,
26 real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus.
27 & Prof. Code § 17203).

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1 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, and 1198 for which this Court should
5 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may
6 be necessary to prevent and remedy the conduct held to constitute unfair competition, including
7 restitution of wages wrongfully withheld.

8 49. By the conduct alleged herein, DEFENDANT's practices were unlawful and
9 unfair in that these practices violated public policy, were immoral, unethical, oppressive
10 unscrupulous or substantially injurious to employees, and were without valid justification or
11 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
12 of the California Business & Professions Code, including restitution of wages wrongfully
13 withheld.

14 50. By the conduct alleged herein, DEFENDANT's practices were deceptive and
15 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
16 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
17 accurately to record the applicable rate of all overtime worked, and failed to provide the
18 required amount of overtime compensation due to a systematic miscalculation of the overtime
19 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
20 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
21 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
22 including restitution of wages wrongfully withheld.

23 51. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
24 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANT.

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1 52. By the conduct alleged herein, DEFENDANT’s practices were also unfair and
2 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

23 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
24 and 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
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
27 unfair business practices, including earned but unpaid wages for all overtime worked.
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1 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
4 engaging in any unlawful and unfair business practices in the future.

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

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME COMPENSATION**
14 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

15 (Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
16 Defendants)

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

20 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
22 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
23 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
24 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
25 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
26 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
any workweek.

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

1 63. Cal. Lab. Code § 510 further provides that employees in California shall not be
2 employed more than eight (8) hours per workday and/or more than forty (40) hours per
3 workweek unless they receive additional compensation beyond their regular wages in amount
4 specified by law.

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

9 65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
10 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
11 amount of overtime worked and correct applicable overtime rate for the amount of overtime
12 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
13 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
15 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
all overtime worked.

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

22 67. In committing these violations of the California Labor Code, DEFENDANT
23 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
24 consequently underpaid the actual time worked by PLAINTIFF and other members of the
25 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
26 payment of all earned wages, and other benefits in violation of the California Labor Code, the
27 Industrial Welfare Commission requirements and other applicable laws and regulations.
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1 68. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
3 receive full compensation for all overtime worked.

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

12 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
14 than they were entitled to, constituting a failure to pay all earned wages.

15 71. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
17 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194&
18 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
20 failed to accurately record and pay using the applicable overtime rate as evidenced by
21 DEFENDANT's business records and witnessed by employees.

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

28 73. DEFENDANT knew or should have known that PLAINTIFF and the other
members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their
overtime worked. DEFENDANT systematically elected, either through intentional malfeasance

1 or gross nonfeasance, to not pay employees for their labor as a matter of uniform company
2 policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by
3 refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS the applicable overtime rate.

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

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

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THIRD CAUSE OF ACTION

**FAILURE TO PROVIDE REQUIRED MEAL PERIODS
(Cal. Lab. Code §§ 226.7 & 512)**

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

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

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

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

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

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5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
9 Defendants)

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

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

23 82. DEFENDANT further violated California Labor Code §§ 226.7 and the
24 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
25 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
26 Wage Order, one additional hour of compensation at each employee’s regular rate of pay for
27 each workday that rest period was not provided.
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1 83. As a proximate result of the aforementioned violations, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
3 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code § 226)**

8 *(Alleged against ALL Defendants, and DOES 1 through 20, inclusive)*

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

12 85. Cal. Labor Code § 226 provides that an employer must furnish employees withan
13 “accurate itemized” statement in writing showing:

- 14 a. Gross wages earned;
- 15 b. Total hours worked by the employee, except for any employee whose
16 compensation is solely based on a salary and who is exempt from payment of
17 overtime under subdivision (a) of Section 515 or any applicable order of the
18 Industrial Welfare Commission;
- 19 c. The number of piece rate units earned and any applicable piece rate if the
20 employee is paid on a piece-rate basis;
- 21 d. All deductions, provided that all deductions made on written orders of the
22 employee may be aggregated and shown as one item;
- 23 e. Net wages earned;
- 24 f. The inclusive dates of the period for which the employee is paid;
- 25 g. The name of the employee and his or her social security number, except that by
26 January 1, 2008, only the last four digits of his or her social security number or
27 an employee identification number other than a social security number may be
28 shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and

1 i. All applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

3 86. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
4 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
5 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
6 CLASS with complete and accurate wage statements which failed to show, among other things,
7 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
8 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
9 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
10 furnish each of his or her employees with an accurate itemized wage statement in writing
11 showing, among other things, gross wages earned and all applicable hourly rates in effect during
12 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
13 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
14 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
15 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
16 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

28

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

3 **(Cal. Lab. Code §§201, 202, 203)**

4 *(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all*
5 *Defendants)*

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

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

10 As used in this article:(a) "Wages" includes all amounts for labor performed by
11 employees of every description, whether the amount is fixed or ascertained by the
12 standard of time, task, piece, Commission basis, or other method of calculation. (b)
13 "Labor" includes labor, work, or service whether rendered or performed under contract,
14 subcontract, partnership, station plan, or other agreement if the labor to be paid for is
15 performed personally by the person demanding payment.

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

19 91. Cal. Lab. Code § 202 provides, in relevant part, that:

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

1 92. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
2 SUB-CLASS Members’ employment contract.

3 93. Cal. Lab. Code § 203 provides:

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

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

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

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE PERSONNEL FILE**

20 **(Cal. Lab. Code §§1198.5)**

21 *(Alleged by PLAINTIFF and against all Defendants)*

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

25 97. On August 14, 2018 PLAINTIFF’s counsel of record, as PLAINTIFF’s legal
26 representative caused a written request via certified mail to be delivered to DEFENDANT for
27 PLAINTIFF’s personnel and employment records, including but not limited to (1) payroll
28

1 records, (2) employment contracts; (3) itemized pay stubs, and (4) PLAINTIFF's complete
2 employment file, a true and correct copy of which is attached hereto as Exhibit #1.

3 98. Defendant failed to provide and/or make available to PLAINTIFF his personnel
4 records, payroll records, employment contracts, and entire employment file within thirty (30) of
5 his request stated above. In fact, as of the filing of this Complaint, Defendant still has not
6 provided PLAINTIFF his personnel records, pay stubs, and employment file and DEFENDANT
7 has failed to pay PLAINTIFF the statutory penalty in the amount of \$750.

8 99. DEFENDANT has violated Cal. Lab. Code Section 1198.5 by failing to respond
9 and provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and
10 former employees) have the right to inspect personnel records maintained by the employer
11 "related to the employee's performance or to any grievance concerning the employee."
12 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
13 requested his employment file via certified mail and DEFENDANT failed to respond. As a
14 result, PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with
15 Cal. Lab. Code Section 1198.5, a statutory penalty of \$750, and an award of attorneys' fees and
16 costs for bringing this action.

17 **EIGHTH CAUSE OF ACTION**

18 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

19 **(Cal. Lab. Code §§1102.5 and 6310, and Government Code § 12900, et seq.)**

20 *(Alleged by PLAINTIFF and against all Defendants)*

21 100. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
22 herein, the prior paragraphs of this Complaint.

23 101. On or around February 13, 2018 PLAINTIFF's supervisor (Bard McTeer,
24 hereinafter "Mr. McTeer") scheduled himself for a graveyard shift so that he could re-set the
25 store's displays. When PLAINTIFF asked whether help is required, he was told by Mr. McTeer
26 that he does not need PLAINTIFF's help because his son is going to come and help him. Mr.
27 McTeer's son was not an employee of DEFENDANT.

1 102. On or around February 14, 2018 PLAINTIFF’s co-worker complained to
2 PLAINTIFF that Mr. McTeer used his son for help rather than one of the qualified staff
3 members employed by DEFENDANT. PLAINTIFF believed that the use of a non-employee to
4 perform work at DEFENDANT’s store violated California and Federal laws. PLAINTIFF
5 contacted DEFENDANT’s Regional Manager—the next higher person in command—to inform
6 DEFENDANT that Mr. McTeer used his son to perform work at DEFENDANT’s store rather
7 than use one of DEFENDANT’s employees.

8 103. PLAINTIFF believed and was concerned that Mr. McTeer employed his own son
9 improperly and illegally in violation of California and Federal laws, in that he was not on
10 Defendant’s payroll and would not be covered by Defendant’s insurance should an accident
11 occur at the store.

12 104. DEFENDANT’s Regional Manager admitted to PLAINTIFF that this was
13 inappropriate and promised to talk to Mr. McTeer. Subsequently, on or around February 16,
14 2018, PLAINTIFF spoke to Mr. McTeer about the incident, and Mr. McTeer explained to him
15 that “his son was going through a tough time and needed the work.”

16 105. PLAINTIFF spoke to Mr. McTeer and to the Regional Manager because he
17 believed Mr. McTeer’s conduct violated the law.

18 106. PLAINTIFF later heard that DEFENDANT’s Regional Manager discussed the
19 matter with Mr. McTeer.

20 107. Beginning February 16, 2018 and up until March 9, 2018, when PLAINTIFF was
21 terminated, Mr. McTeer stopped assigning managerial tasks to PLAINTIFF. Mr. McTeer’s
22 treatment of PLAINTIFF from that point on became generally negative.

23 108. On March 9, 2018 Mr. McTeer suspended PLAINTIFF.

24 109. The reason provided to PLAINTIFF for the suspension was PLAINTIFF’s
25 “insubordination” during an incident in which PLAINTIFF instructed an employee of Defendant
26 who was PLAINTIFF’s subordinate to cover the store’s front desk. PLAINTIFF was not
27 warned or written up and was not provided any written documents in connection with his
28 suspension. Between March 9, 2018 and March 15, 2018, PLAINTIFF attempted multiple
times, without success, to contact DEFENDANT to discuss his suspension.

1 110. Between March 9, 2018 and March 15, 2018, PLAINTIFF did not work. On
2 March 15, 2018 Mr. McTeer met with PLAINTIFF and informed PLAINTIFF that his
3 employment with DEFENDANT was terminated effective immediately. The reason provided
4 for PLAINTIFF's termination was "lack of performance." PLAINTIFF was not warned or
5 written up and was not provided any written documents in connection with his lack of
6 performance up until March 15, 2018 when he was terminated.

7 111. In the past, DEFENDANT followed a procedure that included multiple warnings
8 and counseling before terminating the employment of an employee in the same position
9 PLAINTIFF held with DEFENDANT. This procedure was not followed during PLAINTIFF's
10 termination.

11 112. According to DEFENDANT's Employee Handbook, DEFENDANT follows a
12 progressive discipline approach that includes coaching, warnings, suspension, and then
13 termination.

14 113. According to DEFENDANT's Employee Handbook, employees can and are
15 encouraged to raise concerns and make reports to upper management without fear for reprisal.

16 114. In retaliation for complaining to DEFENDANT of DEFENDANT's employee's
17 violations of law and inappropriate behavior, as set forth herein, PLAINTIFF was retaliated
18 against and wrongfully discharged from employment, in violation of Cal. Lab. Code § 98.6.

19 115. As set forth in detail above, Mr. McTeer committed violations of Federal and
20 California laws and company policies, and when the PLAINTIFF complained of such violations
21 to DEFENDANT, PLAINTIFF was subsequently terminated in retaliation just weeks later.

22 116. In or around February 2018, and continuing through out his employment
23 PLAINTIFF engaged in protected activity by complaining to DEFENDANT of PLAINTIFF's
24 supervisor's illegal and inappropriate behavior, including, but not limited to his supervisor
25 illegal and improper employment of his own son to perform work for Defendant "under the
26 table."

27 117. PLAINTIFF worked for DEFENDANT in California as a non-exempt employee.
28 Subsequent to PLAINTIFFS' participation in protective activity by complaining to
DEFENDANT of his supervisor's unlawful conduct, DEFENDANT subjected PLAINTIFF to
adverse employment actions by retaliating against him. Specifically, after PLAINTIFF

1 complained to DEFENDANT of his supervisor's actions, DEFENDANT terminated
2 PLAINTIFF employment with DEFENDANT. As a result, there is a causal link between the
3 protected activity and DEFENDANT's decision to terminate his employment, which is against
4 public policy.

5 118. Cal. Labor Code § 1102.5 and Government Code §§ 12900, et seq. prohibit an
6 employer from taking an adverse employment action against an employee, including
7 terminating an employee's employment, for raising complaints of illegality and/or belief that the
8 employee may disclose illegality.

9 119. Cal. Labor Code § 6310 prohibits discrimination against employees for
10 exercising their rights by complaining of illegal practices.

11 120. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination
12 of his employment, in retaliation for Plaintiff complaining to DEFENDANT of his supervisor's
13 unlawful behavior.

14 121. The wrongful termination of the employment of PLAINTIFF was and is a
15 substantial factor causing harm to PLAINTIFF.

16 122. On September 24, 2018, PLAINTIFF filed a complaint with the Department of
17 Fair Employment & Housing ("DFEH"), and received an immediate Right to Sue that same day.
(See Exhibit #2).

18 **NINTH CAUSE OF ACTION**

19 **RETALIATION**

20 **(Cal. Lab. Code §§1102.5 and 6310, and Government Code § 12900, et seq.)**

21 *(Alleged by PLAINTIFF and against all Defendants)*

22 123. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
23 herein, the prior paragraphs of this Complaint.

24 124. At all relevant times, Labor Code section 1102.5 was in effect and was binding
25 on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee,
26 including PLAINTIFF, for raising complaints of illegality and/or belief that the employee may
27 disclose illegality.

1 125. At all relevant times, Government Code section 12900 was in effect and was
2 binding on DEFENADNT. This statute prohibits DEFENDANT from committing unlawful
3 employment practices, including retaliating against PLAINTIFF for seeking to exercise rights
4 guaranteed under FEHA, participating in protected activities, and/or opposing DEFENDANT’S
5 failure to provide such rights.

6 126. PLAINTIFF raised complaints of illegality while he worked for DEFENDANT
7 was believed to be willing to raise complaints, and DEFENDANT retaliated against him by
8 taking adverse employment actions including employment termination against him.

9 127. As a proximate result of DEFENDANT’S willful, knowing, and intentional
10 violation(s) of Labor Code section 1102.5 and Government Code section 12900, PLAINTIFF
11 has suffered and continues to suffer humiliation, emotional distress, and mental and physical
12 pain and anguish, all to his damage in a sum according to proof.

13 128. As a result of DEFENDANT’S adverse employment actions against
14 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to proof.

15 129. DEFENDANT’S misconduct was committed intentionally, in a malicious,
16 oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against
17 DEFENDANT.

18 130. On September 24, 2018, PLAINTIFF filed a complaint with the Department of
19 Fair Employment & Housing (“DFEH”), and received an immediate Right to Sue that same day.
20 (See Exhibit #2).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
23 severally, as follows:

- 24 1. On behalf of the CALIFORNIA CLASS:
- 25 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
26 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - 27 b. An order temporarily, preliminarily and permanently enjoining and restraining
28 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

- c. An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and
- f. Injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, statutory penalties, reasonable costs and attorneys' fees.

3. On behalf of PLAINTIFF individually:

- a. For all special damages which were sustained as a result of DEFENDANT's

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conduct, including but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the retaliatory practices of DEFENDANT;

b. For all exemplary damages, according to proof, which were sustained as a result of DEFENDANT's conduct.

4. 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 costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1198.5.

DATED: September 25, 2018

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: September 25, 2018

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1

AUTHORIZATION FOR RELEASE OF EMPLOYMENT RECORDS

I, Michael Murphy ("Client"), do hereby authorize Rockwood ("Employer"), to release my entire employment file, including all pay statements, time cards issued to me, arbitration agreements signed by me, background check disclosure and authorization forms signed by me, and all other documents signed by me from the date of my hire, to my attorneys at Blumenthal, Nordrehaug & Bhowmik located at 2255 Calle Clara, La Jolla, California 92037. Thank you.

Respectfully,


Client

CA 1689

FACSIMILE
(858) 551-1232

BLUMENTHAL, NORDREHAUG & BHOWMIK

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037
GENERAL E-MAIL: bamlawca@gmail.com
Web Site: www.bamlawca.com

TELEPHONE
(858) 551-1223

WRITERS E-MAIL: Nick@bamlawca.com

WRITERS EXT: 1004

August 14, 2018

CA 1689

VIA CERTIFIED MAIL

Rockler Retail Group Inc.
4365 Willow Drive
Medina, MN 55340
Certified Mail # 70172620000111324706

Re: Employee Michael G. Murphy – Request for Employment Records

Dear Human Resource Director:

Please be advised we have been retained by Michael G. Murphy to investigate employment law violations. Mr. Murphy worked for your company in California. Please direct all future communication regarding this matter to our office.

This letter is written to request copies of all paystubs issued to Mr. Murphy during her tenure of employment with you. Additionally, we would like a copy of Mr. Murphy's complete employment file, including all documents and arbitration agreements signed by Mr. Waldman and all background check disclosure and authorization forms.

Under California Labor Code Section 1198.5, an employer is required to allow an employee to inspect and receive a copy of his or her personnel records which relate to the employee's performance or to any grievance concerning the employee. The failure of an employer to permit an employee to review his or her personnel file is a misdemeanor per Labor Code Section 1199. Labor Code Section 432 also entitles an employee to receive copies of any signed documents related to the obtaining or holding of employment.

Additionally, California Labor Code Section 226(b) requires employers to make payroll records available to employees upon reasonable request. Labor Code Section 226(c) further requires that the employer comply with the request for records as soon as practicable, but no later than thirty (30) calendar days from the date of request. Finally Labor Code Section 226(f) entitles employees to recover civil penalties of \$750.00 against an employer who violates these requirements.

This request is made on behalf of Michael G. Murphy in accordance with California Labor Code §§ 226, 1198.5, as well as the applicable Industrial Welfare Commission Wage Order, § 7(c). Please provide the records within thirty (30) days from the date of this correspondence. We would be pleased to pay for any reasonable copy charges.

Respectfully,

/s/ Nicholas De Blouw

Nicholas J. De Blouw, Esq

EXHIBIT 2



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR KEVIN KISH

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | email: contact.center@dfeh.ca.gov

September 24, 2018

Shani Zakay
5850 Oberlin Drive Suite 230A
San Diego, California 92121
Nicholas De Blouw
2255 Calle Clara
La Jolla, California 92037

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 201809-03654524
Right to Sue: Murphy / ROCKLER RETAIL GROUP, INC

Dear Shani ZakayNicholas De Blouw:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR KEVIN KISH

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | email: contact.center@dfeh.ca.gov

September 24, 2018

RE: Notice of Filing of Discrimination Complaint
DFEH Matter Number: 201809-03654524
Right to Sue: Murphy / ROCKLER RETAIL GROUP, INC

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing

1 violation of California and Federal laws. Subsequently Complainant spoke to Mr.
2 McTeer about the incident. Complainant later heard that Respondent's Regional
3 Manager discussed the matter with Mr. McTeer.

4 Mr. McTeer's treatment of Complainant from that point on became generally
5 negative. On March 9, 2018 Mr. McTeer suspended Complainant . The reason
6 provided to Complainant for the suspension was Complainant's "insubordination."
7 On March 15, 2018 Mr. McTeer met with Complainant and informed Complainant
8 that his employment with Respondent was terminated effective immediately. The
9 reason provided for Complainant's termination was "lack of performance."
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1 VERIFICATION

2 I, **Shani Zakay**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On September 24, 2018, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

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San Diego, California