

**SUMMONS
(CITACION JUDICIAL)**

ELECTRONICALLY FILED
7/26/2022 1:22 PM
Kern County Superior Court
By Alejandra Velazquez, Deputy

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

ILUM SOLAR, a California corporation; STENDERUP5 CORP., a California corporation; and DOES 1 through 30, Inclusive;

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

HECTOR SANDOVAL, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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):
Kern Superior Court - Metro Division
1215 Truxtun Avenue
Bakersfield, CA 93301

CASE NUMBER:
(Número del Caso): **BCV-22-101852**

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: (858) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 7/26/2022 TAMARAH HARBER-PICKENS Clerk, by _____, Deputy
(Fecha) (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)).



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):

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23 Attorneys for Plaintiff HECTOR SANDOVAL

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **IN AND FOR THE COUNTY OF KERN**

26 HECTOR SANDOVAL, an individual, on
27 behalf of himself, and on behalf of all persons
28 similarly situated,

Plaintiff,

vs.

ILUM SOLAR, a California corporation;
STENDERUP5 CORP., a California
corporation; and DOES 1 through 30, Inclusive;

Defendants.

Case No. BCV-22-101852

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 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.

DEMAND FOR JURY TRIAL

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

INTRODUCTION

1. PLAINTIFF is an individual who worked as a sales representative in California for Defendant ILUM SOLAR ("DEFENDANT Ilum Solar") and Defendant STENDERUP5 CORP ("DEFENDANT Stenderup5"), hereinafter collectively referred to as "DEFENDANTS" and/or "DEFENDANT." PLAINTIFF alleges that DEFENDANTS have violated and continues to violate the California Labor Code protections applicable to California employees because DEFENDANTS have misclassified its California employees as independent contractors. In order to provide services to their customers, DEFENDANTS hire California workers to aid DEFENDANTS in providing services in the usual course of DEFENDANT's full-service solar energy business to their clients. DEFENDANTS 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 DEFENDANTS, 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

1 extent possible, DEFENDANTS devised a scheme to place the responsibility for the payment of these
2 costs and expenses of DEFENDANTS on the shoulders of PLAINTIFF and other similarly situated
3 California employees. As employer, DEFENDANTS are legally responsible for the payment of all
4 these expenses. This lawsuit is brought in order to collect the wages due to PLAINTIFF and all those
5 similarly situated misclassified independent contractors as DEFENDANTS' employees, the cost of
6 the employer's share of payments to the federal and state governments for income taxes, social
7 security taxes, Medicare insurance, unemployment insurance and payments for workers'
8 compensation insurance, plus penalties and interest.

9 THE PARTIES

10 2. DEFENDANT Ilum Solar is a California corporation, that at all relevant times
11 mentioned herein conducted and continues to conduct substantial business in the State of California.

12 3. DEFENDANT Stenderup5 is a California corporation that at all relevant times
13 mentioned herein conducted and continues to conduct substantial business in the State of California.

14 4. DEFENDANT Ilum Solar and Stenderup5 were the joint employers of PLAINTIFF as
15 evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work
16 for respectively and are therefore jointly responsible as employers for the conduct alleged herein as
17 "DEFENDANTS" and/or "DEFENDANT."

18 5. DEFENDANTS utilize independent contractors, rather than employees, to provide its
19 clients with solar energy services, including in Kern County where PLAINTIFF worked.

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

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

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

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

18 10. PLAINTIFF worked as a sales representative for DEFENDANTS from August of 2021
19 to February of 2022 and was at all times during his employment classified by DEFENDANTS as an
20 independent contractor.

21 11. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
22 individuals who worked for Defendant Ilum Solar and/or Defendant Stenderup⁵ in California as
23 independent contractors (“CALIFORNIA CLASS”) at any time during the period beginning four (4)
24 years prior to the filing of this Complaint and ending on the date as determined by the Court (the
25 “CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
26 members is under five million dollars (\$5,000,000.00).

27 12. DEFENDANTS’ uniform policies and practices alleged herein were unlawful, unfair
28 and deceptive business practices whereby DEFENDANTS retained and continue to retain wages and

1 other benefits due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

2 13. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
3 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
4 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT’s past
5 and current unlawful conduct, and all other appropriate legal and equitable relief.

6 **THE CONDUCT**

7 **A. Misclassification**

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

19 15. Similarly, PLAINTIFF and other members of the CALIFORNIA CLASS were not
20 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
21 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and
22 other members of the CALIFORNIA CLASS were paid the hourly rate to perform labor services on
23 DEFENDANT’s behalf. PLAINTIFF and other workers were not compensated any other wages besides
24 the non-negotiable hourly rate, and they were not allowed to record their time while they waited for
25 DEFENDANT to give them work. DEFENDANT did not pay PLAINTIFF and other CALIFORNIA
26 CLASS members for the time spent driving to and from jobs, the materials required to perform the
27 jobs, and all the other time they spent working for DEFENDANT outside of the job assignment they
28 were placed at with DEFENDANT’s third-party customers. The finite set of tasks required to be

1 performed by the workers is, when notified via cell phone, travel to DEFENDANT's customers to
2 perform jobs, including but not limited to, networking, cold calling, selling, and installing
3 DEFENDANT'S products, all in accordance with DEFENDANT's business practices and policies.

4 16. As a result, stripped of all the legal fictions and artificial barriers to an honest
5 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
6 CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the other members
7 of the CALIFORNIA CLASS are and were employees of DEFENDANT and not independent
8 contractors of DEFENDANT and should therefore be properly classified as non-exempt, hourly
9 employees.

10 17. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
11 members as defined by DEFENDANT was executed by them through the performance of non-exempt
12 labor.

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

28 19. DEFENDANT, as a matter of law, has the burden of proving that employees are

1 properly classified and that DEFENDANT otherwise complies with applicable laws. DEFENDANT,
2 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
3 Members as independent contractors in violation of the California Labor Code and regulations
4 promulgated thereunder.

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

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

13 21. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
14 CLASS perform work subject to the control of DEFENDANT in that DEFENDANT had the authority
15 to exercise complete control over the work performed and the manner and means in which the work
16 was performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
17 as to how to perform their work.

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

27 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
28 involved in a distinct business, but instead were provided with instructions as to how to

1 perform their work and the manner and means in which the work was to be performed
2 by means of DEFENDANT and DEFENDANT's manuals and written instructions;

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

7 (c) DEFENDANT set the requirements as to what policies and procedures all of the
8 workers were to follow, including but not limited to, potential clients to call, sales to
9 make, networking to be completed, and installation jobs;

10 (d) PLAINTIFF and other members of the CALIFORNIA CLASS had no
11 opportunity for profit or loss because DEFENDANT only paid these workers an hourly
12 rate and/or commission. DEFENDANT controlled and assigned the workers which tasks
13 were to be performed;

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

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

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

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

25 (i) DEFENDANT had the "right" to control every critical aspect of DEFENDANT
26 labor operation in that DEFENDANT provided the customer, assigned where
27 PLAINTIFF and other members of the CALIFORNIA CLASS were to go, assigned
28 the hourly rate or flat rate, and step by step instructions to PLAINTIFF and other

1 members of the CALIFORNIA CLASS as to the entire process of working at their
2 assigned locations. PLAINTIFF and other workers provided services and labor for
3 DEFENDANT customers and were not actually in business for themselves.

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

6 23. DEFENDANT willfully misclassified PLAINTIFF and other members of the
7 CALIFORNIA CLASS who provided DEFENDANT with solar energy sales services for
8 DEFENDANT's clients. In other words, PLAINTIFF and other similarly situated California workers
9 provided DEFENDANT with work and services within the usual course of DEFENDANT's business.

10 24. DEFENDANT markets itself to the public, PLAINTIFF and other members of the
11 CALIFORNIA CLASS as a provider of solar energy services. As a result, DEFENDANT
12 unquestionably holds itself out to the public, PLAINTIFF and other members of the CALIFORNIA
13 CLASS as a provider of solar energy services. Therefore, the performance of DEFENDANT's solar
14 energy services by PLAINTIFF and other members of the CALIFORNIA CLASS is not outside
15 DEFENDANT'S usual course of business.

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

19 25. PLAINTIFF and the other members of the CALIFORNIA CLASS are not and were not
20 engaged in a customarily independently established trade, occupation or business as the same nature of
21 the work performed.

22 **B. Meal Period Violations**

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

1 may be waived by mutual consent of the employer and employee only if the first meal period was not
2 waived. Labor Code Section 512.

3 27. If an employer fails to provide an employee a duty-free meal period in accordance with
4 an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular
5 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
6 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

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

19 **C. Rest Period Violations**

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

28 30. If an employer fails to provide an employee a rest period in accordance with an applicable

1 IWC Order, the employer shall pay the employee one additional hour of pay at the employee's regular
2 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
3 an employer does not provide all of the rest periods required in a workday, the employee is entitled to
4 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
5 was not provided during that workday.

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

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

18 32. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately
19 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
20 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
21 is required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked, meaning
22 the time during which an employee was subject to the control of an employer, including all the time
23 the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and
24 CALIFORNIA CLASS members to work off the clock without paying them for all the time they were
25 under DEFENDANT's control. PLAINTIFF and other CALIFORNIA CLASS Members also worked
26 more than eight hours in a workday and/or forty hours in a workweek, but DEFENDANT failed to pay
27 these employees overtime pay as DEFENDANT only paid a flat rate or a flat hourly rate for all time
28 worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum

1 wages and overtime wage compensation by working without their time being correctly recorded and
2 without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
3 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
4 DEFENDANT's business records. As a result, DEFENDANT failed to compensate PLAINTIFF and
5 the members of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours
6 worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

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

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

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

19 35. From time-to-time during the CLASS PERIOD, in the course of their employment
20 PLAINTIFF and other CALIFORNIA CLASS members as a business expense, were required by
21 DEFENDANT to use personal cellular phones and personal vehicles, as a result of and in furtherance
22 of their job duties as employees for DEFENDANT but were not reimbursed or indemnified by
23 DEFENDANT for the cost associated with the use of the personal cellular phones and personal vehicles
24 for DEFENDANT's benefit. In order to work for DEFENDANT, PLAINTIFF and other
25 CALIFORNIA CLASS Members were required to use their personal vehicles to travel to different
26 locations each work shift and were also required to use their personal cell phones to review, receive
27 and accept job assignments, as well as to communicate with current and/or potential clients, and as
28 such it is mandatory to have a cell phone. As a result, in the course of their employment with

1 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed
2 business expenses which included, but were not limited to, costs related to the use of their personal
3 cellular phones and personal vehicle on behalf of and for the benefit of DEFENDANT.

4 **F. Wage Statement Violations**

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

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

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

28 ///

1 **G. Unfair Competition**

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

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

21 **THE CALIFORNIA CLASS**

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

27 42. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
28 against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

1 43. All CALIFORNIA CLASS members who performed and continue to perform this work
2 for DEFENDANT during the CLASS PERIOD are similarly situated in that they are subject to
3 DEFENDANT's policy and practice that required them to perform work without compensation as
4 required by law.

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

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

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

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

22 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
23 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
24 CALIFORNIA CLASS with all legally required meal and rest breaks;

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

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

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

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

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

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

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

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

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

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

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

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

28 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the

1 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
2 parties and the Court;

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

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

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

24 47. In addition to meeting the statutory prerequisites to a Class Action, this Action is properly
25 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 by individual members
28 of the CALIFORNIA CLASS will create the risk of:

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

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

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

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

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

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

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

28 (iii) In the context of wage litigation because as a practical matter a substantial

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

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

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

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

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

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

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

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

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

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

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

28 (g) DEFENDANT has acted or has refused to act on grounds generally applicable to

1 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
2 CLASS as a whole;

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

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

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

13 **THE CALIFORNIA LABOR SUB-CLASS**

14 50. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
15 Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
16 CLASS who are or previously were employed by Defendant Ilum Solar and/or Defendant Stenderup5
17 in California as independent contractors (the "CALIFORNIA LABOR SUB-CLASS) at any time
18 during the period three (3) years prior to the filing of the Complaint and ending on the date as
19 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code
20 of Civ. Proc § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
21 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

1 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
2 should be adjusted accordingly.

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

8 53. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

10 54. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
11 California law by:

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

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

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

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

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

1 their job duties; and,

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

7 55. This 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 LABOR SUB-CLASS are so
10 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and
11 the disposition of their claims as a class will benefit the parties and the Court;

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

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

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

28 56. In addition to meeting the statutory prerequisites to a Class Action, this action is

1 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

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

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 violations of California law as
20 listed above, and predominate over any question affecting only individual CALIFORNIA LABOR
21 SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and
22 efficient adjudication of the controversy, including consideration of:

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

28 ii) Class certification will obviate the need for unduly duplicative litigation

1 that would create the risk of:

2 A. Inconsistent or varying adjudications with respect to individual
3 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
4 of conduct for the DEFENDANT; and/or,

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

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

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

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

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

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

28 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that

1 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

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

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

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

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

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

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

20 **JURISDICTION AND VENUE**

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

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

1 CALIFORNIA LABOR SUB-CLASS.

2 **FIRST CAUSE OF ACTION**

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

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

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

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

8 61. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
9 17021.

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

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

22 California Business & Professions Code § 17203.

23 63. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
24 business practice which violates California law, including but not limited to the applicable Industrial
25 Wage Orders, the California Labor Code including Sections 201, 202, 203, 204, 210, 221, 226.7, 226.8,
26 510, 512, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which
27 this Court should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof
28 § 17203, as may be necessary to prevent and remedy the conduct held to constitute unfair competition,

1 including restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the
2 payment of the employer's share of income taxes, social security taxes, unemployment insurance and
3 workers' compensation insurance.

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

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

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

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

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

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

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

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

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

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

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

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

1 do, seek such relief as may be necessary to restore to them the money and property which
2 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
3 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

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

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

15 **SECOND CAUSE OF ACTION**

16 **For Failure to Pay Minimum Wages**

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

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

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

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

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

28 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the

1 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
2 minimum so fixed is unlawful.

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

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

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

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

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

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

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

1 them and which will be ascertained according to proof at trial.

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

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

16 91. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
17 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
18 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
19 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined
20 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
21 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore
22 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
23 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
24 DEFENDANT'S conduct as alleged herein was willful, intentional and not in good faith. Further,
25 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
26 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 92. 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 93. 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 94. 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 95. 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 96. 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 97. 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 98. 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 99. 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.

3 100. 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.

8 101. 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)**

15 102. 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.

18 103. 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.

28 104. 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.

5 105. 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)**

12 106. 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.

14 107. 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.

22 108. 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.

3 109. 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.

7 110. 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)**

21 111. 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.

23 112. 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.

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

27 114. 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)**

7 115. 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.

10 116. 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.

20 117. 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."

22 118. 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.

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

7 120. 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.

14 121. 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.

17 122. 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 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and
24 severally, as follows:

25 1. On behalf of the CALIFORNIA CLASS:

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

28 B) An order temporarily, preliminarily and permanently enjoining and restraining

1 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

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

5 D) Restitutionary disgorgement of DEFENDANT’S ill-gotten gains into a fluid fund
6 for restitution of the sums incidental to DEFENDANT’S violations due to PLAINTIFF and to the other
7 members of the CALIFORNIA CLASS.

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

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

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

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

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

22 E) Meal and rest period compensation pursuant to California Labor Code Section
23 226.7 and the applicable IWC Wage Order;

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

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

27 4. On all claims:

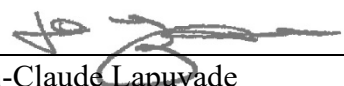
28 A) An award of interest, including prejudgment interest at the legal rate;

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- 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.
- D)

Dated: July 26, 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: July 26, 2022

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF