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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 MICHAEL ASHLOCK, an individual, on
11 behalf of himself and on behalf of all persons
12 similarly situated,

13 Plaintiff,

14 vs.

15 ADVANTIS MEDICAL STAFFING, LLC, a
California Limited Liability Company; and
16 Does 1 through 50, Inclusive;

17 Defendants.

Case No: 37-2020-00022305-CU-OE-CTL

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq;*
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq;*
- 3) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

DEMAND FOR A JURY TRIAL

1 Plaintiff Michael Ashlock (“PLAINTIFF”), an individual, on behalf of himself and all
2 other similarly situated current and former employees, and on behalf of the people of
3 the State of California and as “aggrieved employees” acting as a private attorney general
4 under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”)
5 alleges on information and belief, except for his own acts and knowledge which are based
6 on personal knowledge, the following:

7 **THE PARTIES**

8 1. Defendant Advantis Medical Staffing, LLC is a California limited liability
9 company that at all relevant times mentioned herein conducted and continues to conduct
10 substantial and regular business throughout California.

11 2. DEFENDANT is a staffing company that recruits and places traveling nurses in
12 medical facilities.

13 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
14 employee entitled to overtime pay and meal and rest periods from March 27, 2020 to April 23,
15 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
16 non-exempt employee paid in whole or in part on an hourly basis and received additional
17 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

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

23 **THE CONDUCT**

24 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and
25 continues to fail to accurately calculate and pay PLAINTIFF and the other members of the
26 CALIFORNIA CLASS for their minimum and overtime wages. DEFENDANT unlawfully and
27 unilaterally failed to accurately calculate minimum and overtime wages for time worked by
28 PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these
employees the correct compensation. As a result, PLAINTIFF and the other members of the

1 CALIFORNIA CLASS forfeited wages due them for working without compensation at the
2 correct minimum wage and overtime rates. DEFENDANT's policy and practice to not pay the
3 members of the CALIFORNIA CLASS the correct compensation for all time worked in
4 accordance with applicable law is evidenced by DEFENDANT's business records. This policy
5 and practice of DEFENDANT was intended to purposefully avoid the payment of the correct
6 compensation as required by California law which allowed DEFENDANT to illegally profit and
7 gain an unfair advantage over competitors who complied with the law.

8 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
9 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
10 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
11 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
12 all time worked, meaning the time during which an employee was subject to the control of an
13 employer, including all the time the employee was permitted or suffered to permit this work.
14 DEFENDANT required these employees to work off the clock without paying them for all the
15 time they were under DEFENDANT's control. Specifically, DEFENDANT required
16 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
17 meal break. PLAINTIFF was from time to time interrupted by work assignments. Indeed there
18 were days where PLAINTIFF did not even receive a partial lunch. As a result, PLAINTIFF and
19 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
20 working without their time being accurately recorded and without compensation at the
21 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
22 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
23 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

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

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

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

1 15. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
2 her employees with an accurate itemized wage statement in writing showing, among other
3 things, gross wages earned and all applicable hourly rates in effect during the pay period and the
4 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
5 failed to provide to PLAINTIFF and the CALIFORNIA CLASS wage statements that identify
6 the correct gross and net wages earned, the applicable number of hours worked and rates of pay.
7 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
8 PLAINTIFF and other CALIFORNIA CLASS members an itemized wage statement that lists
9 all the requirements under California Labor Code 226 *et seq.*

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

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

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

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

14 19. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to
15 him in the form of two components. One component of PLAINTIFF's compensation was a base
16 hourly wage. The second component of PLAINTIFF's compensation were non-discretionary
17 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain
18 predefined performance requirements. PLAINTIFF met DEFENDANT's predefined eligibility
19 performance requirements in various pay periods throughout his employment with
20 DEFENDANT and DEFENDANT paid PLAINTIFF the non-discretionary incentive wages.
21 During these pay periods in which PLAINTIFF was paid the non-discretionary incentive wages
22 by DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but DEFENDANT
23 never included the incentive compensation in PLAINTIFF's regular rate of pay for the purposes
24 of calculating what should have been PLAINTIFF's accurate overtime rate and thereby
25 underpaid PLAINTIFF for overtime worked throughout his employment with DEFENDANT.
26 The incentive compensation paid by DEFENDANT constituted wages within the meaning of
27 the California Labor Code and thereby should have been part of PLAINTIFF's "regular rate of
28 pay." PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and

1 was not fully relieved of duty for his meal periods. PLAINTIFF was required to perform work
2 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an
3 off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-
4 duty meal period from time to time in which he was required by DEFENDANT to work ten (10)
5 hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
6 compensation and in accordance with DEFENDANT's corporate policy and practice.
7 DEFENDANT also provided PLAINTIFF with a pay stub that failed to accurately display
8 PLAINTIFF's correct rates of overtime pay and payments for missed meal and rest periods for
9 certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not
10 fully paid PLAINTIFF the overtime compensation still owed to him or any penalty wages owed
11 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
12 does not exceed the sum or value of \$75,000.

13 JURISDICTION AND VENUE

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

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

23 THE CALIFORNIA CLASS

24 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
25 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
26 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
27 individuals who are or previously were employed by DEFENDANT in California and classified
28 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period

1 beginning on the date four (4) years prior to the filing of this Complaint and ending on the date
2 as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
3 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
4 dollars (\$5,000,000.00).

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

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

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

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

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

19 28. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
20 CLASS Members is impracticable.

21 29. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
22 law by:

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

- 1 b. Committing an act of unfair competition in violation of the California Unfair
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
3 unfairly, and/or deceptively having in place a company policy, practice and
4 procedure that failed to correctly calculate overtime compensation due to
5 PLAINTIFF and the members of the CALIFORNIA CLASS
- 6 c. Committing an act of unfair competition in violation of the California Unfair
7 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating the
8 Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, by failing to pay
9 the correct federal overtime wages to the PLAINTIFF and the members of the
10 CALIFORNIA CLASS as legally required by the FLSA, and retaining the unpaid
11 federal overtime to the benefit of DEFENDANT;
- 12 d. Committing an act of unfair competition in violation of the California Unfair
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
14 provide mandatory meal and/or rest breaks to PLAINTIFF and the
15 CALIFORNIA CLASS members; and,
- 16 e. Committing an act of unfair competition in violation of the California Unfair
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
18 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
19 CLASS members with necessary expenses incurred in the discharge of their job
20 duties.

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

- 23 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
24 joinder of all such persons is impracticable and the disposition of their claims as
25 a class will benefit the parties and the Court;
- 26 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
27 raised in this Complaint are common to the CALIFORNIA CLASS will apply
28 uniformly to every member of the CALIFORNIA CLASS;

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

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

- 22 a. Without class certification and determination of declaratory, injunctive, statutory
23 and other legal questions within the class format, prosecution of separate actions
24 by individual members of the CALIFORNIA CLASS will create the risk of:
- 25 i. Inconsistent or varying adjudications with respect to individual members
26 of the CALIFORNIA CLASS which would establish incompatible
27 standards of conduct for the parties opposing the CALIFORNIA CLASS;
28 and/or;

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

5 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
6 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
7 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
8 DEFENDANT uniformly failed to pay all wages due to members of the
9 CALIFORNIA CLASS as required by law;

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

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

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

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

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

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

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

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS

1 Members because the DEFENDANT's employment practices were uniform and
2 systematically applied with respect to the CALIFORNIA CLASS.

- 3 b. A Class Action is superior to any other available method for the fair and efficient
4 adjudication of the claims of the members of the CALIFORNIA CLASS because
5 in the context of employment litigation a substantial number of individual
6 CALIFORNIA CLASS Members will avoid asserting their rights individually
7 out of fear of retaliation or adverse impact on their employment;
- 8 c. The members of the CALIFORNIA CLASS are so numerous that it is
9 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 10 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
11 obtain effective and economic legal redress unless the action is maintained as a
12 Class Action;
- 13 e. There is a community of interest in obtaining appropriate legal and equitable
14 relief for the acts of unfair competition, statutory violations and other
15 improprieties, and in obtaining adequate compensation for the damages and
16 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
17 CLASS;
- 18 f. There is a community of interest in ensuring that the combined assets of
19 DEFENDANT are sufficient to adequately compensate the members of the
20 CALIFORNIA CLASS for the injuries sustained;
- 21 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
22 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
23 respect to the CALIFORNIA CLASS as a whole;
- 24 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
25 business records of DEFENDANT; and
- 26 i. Class treatment provides manageable judicial treatment calculated to bring an
27 efficient and rapid conclusion to all litigation of all wage and hour related claims
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1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA CLASS.

3 33. DEFENDANT maintains records from which the Court can ascertain and
4 identify by job title each of DEFENDANT's employees who as have been intentionally
5 subjected to DEFENDANT's conduct as herein alleged. PLAINTIFF will seek leave to amend
6 the Complaint to include any additional job titles of similarly situated employees when they
7 have been identified.

8 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 36. DEFENDANT maintains records from which the Court can ascertain and
2 identify by name and job title, each of DEFENDANT's employees who have been intentionally
3 subjected to DEFENDANT's conduct as herein alleged. PLAINTIFF will seek leave to amend
4 the complaint to include any additional job titles of similarly situated employees when they have
5 been identified.

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

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

- 10 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
11 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
12 violation of the California Labor Code and California regulations and the
13 applicable California Wage Order;
- 14 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
15 to overtime compensation for overtime worked under the overtime pay
16 requirements of California law;
- 17 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
18 for all overtime worked PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS;
- 20 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
22 thirty (30) minute meal breaks and rest periods;
- 23 e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
24 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
25 statements;
- 26 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
27 conduct;

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- 1 g. The proper measure of damages and penalties owed to the members of the
2 CALIFORNIA LABOR SUB-CLASS; and,
3 h. Whether DEFENDANT's conduct was willful.

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

12 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
13 under California law by:

- 14 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
15 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
16 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.
17 Code § 1194 & § 1198;
- 18 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
19 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
20 the correct minimum wage pay for which DEFENDANT is liable pursuant to
21 Cal. Lab. Code §§ 1194 and 1197;
- 22 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
23 and the other members of the CALIFORNIA LABOR SUB-CLASS with all
24 legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
25 legally required rest breaks; and;
- 26 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
27 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
28 statement in writing showing all accurate and applicable overtime rates in effect

1 during the pay period and the corresponding amount of time worked at each
2 overtime rate by the employee;

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

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

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

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

18 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
19 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
20 CLASS and will apply uniformly to every member of the CALIFORNIA
21 LABOR SUB-CLASS;

22 c. The claims of the representative PLAINTIFF are typical of the claims of each
23 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
24 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
25 employee paid on an hourly basis and paid additional non-discretionary incentive
26 wages who was subjected to the DEFENDANT's practice and policy which
27 failed to pay the correct rate of overtime wages due to the CALIFORNIA
28 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic

1 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
3 identically harmed by the same unlawful, deceptive and unfair misconduct
4 engaged in by DEFENDANT; and

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

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

- 15 a. Without class certification and determination of declaratory, injunctive, statutory
16 and other legal questions within the class format, prosecution of separate actions
17 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
18 the risk of:
- 19 i. Inconsistent or varying adjudications with respect to individual members
20 of the CALIFORNIA LABOR SUB-CLASS which would establish
21 incompatible standards of conduct for the parties opposing the
22 CALIFORNIA LABOR SUB-CLASS; or
 - 23 ii. Adjudication with respect to individual members of the CALIFORNIA
24 LABOR SUB-CLASS which would as a practical matter be dispositive of
25 interests of the other members not party to the adjudication or
26 substantially impair or impede their ability to protect their interests.
- 27 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
28 refused to act on grounds generally applicable to the CALIFORNIA LABOR

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

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

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

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

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

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

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

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

- 1 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
2 not be able to obtain effective and economic legal redress unless the action is
3 maintained as a Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable
5 relief for the acts of unfair competition, statutory violations and other
6 improprieties, and in obtaining adequate compensation for the damages and
7 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
8 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
11 CALIFORNIA LABOR 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
14 appropriate with respect 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. The CALIFORNIA
17 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
18 employed by DEFENDANT in California during the CALIFORNIA LABOR
19 SUB-CLASS PERIOD; and
- 20 i. Class treatment provides manageable judicial treatment calculated to bring an
21 efficient and rapid conclusion to all litigation of all wage and hour related claims
22 arising out of the conduct of DEFENDANT as to the members of the
23 CALIFORNIA LABOR SUB-CLASS.

24 **FIRST CAUSE OF ACTION**

25 **UNLAWFUL BUSINESS PRACTICES**

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

27 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against All Defendants)**

28

1 44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

4 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
5 Code § 17021.

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

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

14 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
15 engage in a business practice which violates California law, including but not limited to, the
16 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
17 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, The Fair Labor
18 Standards Act and federal regulations promulgated thereunder, for which this Court should
19 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may
20 be necessary to prevent and remedy the conduct held to constitute unfair competition, including
21 restitution of wages wrongfully withheld.

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

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

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

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

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

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

26 54. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,

1 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
3 to unfairly compete against competitors who comply with the law.

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

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

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

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

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME COMPENSATION**
27 **(Cal. Lab. Code §§ 510, 1194 and 1198)**
28 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against All Defendants)**

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

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

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

14 62. Cal. Lab. Code § 510 further provides that employees in California shall not be
15 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
16 unless they receive additional compensation beyond their regular wages in amounts specified by
17 law.

18 63. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
19 including minimum wage and overtime compensation and interest thereon, together with the
20 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
21 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

22 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
23 CALIFORNIA LABOR SUB-CLASS Members were not paid for all the time they worked,
24 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFF and
25 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
26 amount of overtime worked and correct applicable overtime rate for the amount of overtime
27 they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
28 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and

1 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact
2 failed to pay these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

26 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
28 worked that they are entitled to, constituting a failure to pay all earned wages.

1 70. DEFENDANT failed to accurately pay PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
3 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
4 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
6 to accurately record and pay using the applicable overtime rate as evidenced by
7 DEFENDANT's business records and witnessed by employees.

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

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

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

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

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

14 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

15 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against All DEFENDANTS)**

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

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

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

26 78. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
27 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
28 than the minimum so fixed is unlawful.

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

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

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

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

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

21 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
22 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
23 Members to work without paying them for all the time they were under DEFENDANT's
24 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
26 were entitled to, constituting a failure to pay all earned wages.

27 85. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS for the true time they worked, PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
3 injury in amounts which are presently unknown to them and which will be ascertained
4 according to proof at trial.

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

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

19 88. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
21 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
22 the California Labor Code and/or other applicable statutes. To the extent minimum wage
23 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
24 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
25 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
26 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
27 LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
28

1 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
2 CLASS Members are entitled to seek and recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

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

6 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against All**
7 **Defendants)**

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

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

27 91. DEFENDANT further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR

1 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable
2 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
3 each workday that a meal period was not provided.

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

7
8 **FIFTH CAUSE OF ACTION**

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

11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against All**
12 **Defendants)**

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

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

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

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
2 each workday that rest period was not provided.

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

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

8 **(Cal. Lab. Code § 226)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against All
10 Defendants)**

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

14 98. Cal. Labor Code § 226 provides that an employer must furnish employees with
15 an "accurate itemized" statement in writing showing:

- 16 a. Gross wages earned,
- 17 b. (2) total hours worked by the employee, except for any employee whose
18 compensation is solely based on a salary and who is exempt from payment
19 of overtime under subdivision (a) of Section 515 or any applicable order
20 of the Industrial Welfare Commission,
- 21 c. the number of piecerate units earned and any applicable piece rate if the
22 employee is paid on a piece-rate basis,
- 23 d. all deductions, provided that all deductions made on written orders of the
24 employee may be aggregated and shown as one item,
- 25 e. net wages earned,
- 26 f. the inclusive dates of the period for which the employee is paid,
- 27 g. the name of the employee and his or her social security number, except that by
28 January 1, 2008, only the last four digits of his or her social security number of

1 an employee identification number other than social security number may be
2 shown on the itemized statement,

3 h. the name and address of the legal entity that is the employer, and

4 i. all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

6 99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
8 statements which failed to show, among other things, the correct gross and net wages earned
9 and correct amount of time worked. Cal. Lab. Code § 226 provides that every employer shall
10 furnish each of his or her employees with an accurate itemized wage statement in writing
11 showing, among other things, gross wages earned and all applicable hourly rates in effect during
12 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
13 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
14 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
15 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
17 § 226.

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

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SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

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

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

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

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

103. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses

1 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-
2 CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
3 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
4 do under the laws and regulations of California.

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

9 **EIGHTH CAUSE OF ACTION**
10 **FAILURE TO PAY WAGES WHEN DUE**
11 **(Cal. Lab. Code § 203)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against All**
13 **Defendants)**

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

17 106. Cal. Lab. Code § 200 provides that:

18 As used in this article:

- 19 (d) "Wages" includes all amounts for labor performed by employees of every
20 description, whether the amount is fixed or ascertained by the standard of time,
21 task, piece, Commission basis, or other method of calculation.
22 (e) "Labor" includes labor, work, or service whether rendered or performed under
23 contract, subcontract, partnership, station plan, or other agreement if the to be
24 paid for is performed personally by the person demanding payment.

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

28 108. Cal. Lab. Code § 202 provides, in relevant part, that:

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

1 payment for purposes of the requirement to provide payment within 72 hours of the
2 notice of quitting.

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

5 110. Cal. Lab. Code § 203 provides:

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

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

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

20 **NINTH CAUSE OF ACTION**

21 **VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT**

22 **[Cal. Labor Code §§ 2698-2699.5]**

23 **(Alleged by PLAINTIFF and the AGGRIEVED EMPLOYEES and against all**
24 **Defendants)**

25 113. PLAINTIFF and the aggrieved employees, defined as all current and former non-exempt
26 employees of DEFENDANTS who suffered one or more Labor Code violations enumerated in
27 Labor Code § 2698 *et seq.* ("AGGRIEVED EMPLOYEES") between May 7, 2019 and the
28 Present ("PAGA PERIOD") reallege and incorporate by this reference, as though fully set forth
herein, the prior paragraphs of this Complaint.

114. PAGA is a mechanism by which the State of California itself can enforce state

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

10 115. PLAINTIFF brings this Representative Action on behalf of the State of California
11 with respect to himself and all other current and former AGGRIEVED EMPLOYEES employed
12 by DEFENDANTS during the PAGA PERIOD.

13 116. At all relevant times, for the reasons described herein, and others, PLAINTIFF
14 and similarly situated employees were aggrieved employees of DEFENDANTS within the
15 meaning of Labor Code Section 2699(c).

16 117. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
17 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
18 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
19 2699.3

20 118. PLAINTIFF complied with the procedures for bringing suit specified in Labor
21 Code Section 2699.3. By certified letter, return receipt requested, dated May 7, 2020,
22 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")
23 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
24 including the facts and theories to support the alleged violations. A true and correct copy of this
25 letter is attached hereto as **Exhibit A**.

26 119. As of January 5, 2021, more than sixty-five (65) days after serving the LWDA
27 with notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified
28 mail of its intent to investigate the Defendant PP's alleged violations as mandated by Labor Code

1 Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
2 PLAINTIFF may commence and is authorized to pursue this cause of action.

3 120. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
5 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFFS and
6 other AGGRIEVED EMPLOYEES legally required meal and rest breaks, and/or separately
7 compensate for rest breaks, (c) failed to provide accurate itemized wage statements, and (d)
8 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
9 Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204 *et seq.*, 210,
10 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and the applicable
11 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
12 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
13 Attorney General Act of 2004 as the representative of the State of California for the illegal
14 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

15 121. Some or all of the conduct and violations alleged herein occurred during the
16 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
17 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
18 that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
19 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.
20 App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one
21 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code
22 violations committed by that employer.”], *Emphasis added, reh'g denied* (June 13, 2018)).

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
26 severally, as follows:

27 1. On behalf of the CALIFORNIA CLASS:

28 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA

1 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- 2 b. An order temporarily, preliminarily and permanently enjoining and restraining
3 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 4 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
5 withheld from compensation due to PLAINTIFF and the other members of the
6 CALIFORNIA CLASS; and
- 7 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
8 for restitution of the sums incidental to DEFENDANT's violations due to
9 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 11 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
12 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
13 action pursuant to Cal. Code of Civ. Proc. § 382;
- 14 b. Compensatory damages, according to proof at trial, including compensatory
15 damages for overtime compensation due PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
17 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 18 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
19 the applicable IWC Wage Order;
- 20 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
21 which a violation occurs and one hundred dollars (\$100) per each member of the
22 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
23 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
24 an award of costs for violation of Cal. Lab. Code § 226
- 25 e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
26 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
27 costs of suit;
- 28 f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and

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1197; and,

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

3. On behalf of the State of California: For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act;

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

DATED: January 14, 2021

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: January 14, 2021

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.