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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF MONTEREY**

14 GUSTAVO DOMINGUEZ and MATTHEW
15 SCOTT, individuals, on behalf of themselves
16 and on behalf of all persons similarly situated,

17 Plaintiffs,

18 vs.

19 LIFESAFER OF NORTHERN
20 CALIFORNIA, a Corporation; and DOES 1
21 through 50, inclusive,

22 Defendants.

Case No. 20CV002586

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

1 Plaintiffs Gustavo Dominguez and Matthew Scott (“PLAINTIFFS”), individuals, on
2 behalf of themselves and all other similarly situated current and former employees allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. DEFENDANT Lifesafer of Northern California (“DEFENDANT”) is a
8 corporation that at all relevant times mentioned herein conducted and continues to conduct
9 substantial business in the state of California.

10 2. DEFENDANT is a privately held corporation which has provided ignition
11 interlock device installation services to its customers since 1992.

12 3. Plaintiff Dominguez was employed by DEFENDANT in California as an
13 interlock installer from March of 2019 to November of 2019 and was at all times classified by
14 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
15 required meal and rest periods and payment of minimum and overtime wages due for all time
16 worked.

17 4. Plaintiff Scott was employed by DEFENDANT in California as an interlock
18 installer from July of 2019 to October of 2019 and was at all times classified by DEFENDANT
19 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal
20 and rest periods and payment of minimum and overtime wages due for all time worked.

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

28 6. PLAINTIFFS bring this Class Action on behalf of themselves and a

1 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
2 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and
3 practice which failed to lawfully compensate these employees. DEFENDANT's policy and
4 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
5 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members
6 of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
7 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
8 named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
9 economically injured by DEFENDANT's past and current unlawful conduct, and all other
10 appropriate legal and equitable relief.

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

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

28

THE CONDUCT

1
2 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
3 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
4 meaning the time during which an employee is subject to the control of an employer, including
5 all the time the employee is suffered or permitted to work. DEFENDANT required
6 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the
7 time they were under DEFENDANT's control. From time to time, DEFENDANT required
8 PLAINTIFFS and CALIFORNIA CLASS Members to work off the clock without paying them
9 for all the time they were under DEFENDANT's control performing post-shift duties,
10 specifically by failing to provide enough labor hours to accomplish all the job tasks that
11 DEFENDANT expected PLAINTIFFS and CALIFORNIA CLASS Members to complete.
12 PLAINTIFFS and CALIFORNIA CLASS Members would clock out of DEFENDANT's
13 timekeeping system, in order to perform additional work for DEFENDANT. As a result,
14 PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by working
15 without their time being accurately recorded and without compensation at the applicable
16 minimum wage and overtime rates. DEFENDANT's policy and practice not to pay
17 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by
18 DEFENDANT's business records. DEFENDANT knew or should have known that
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were working
20 off the clock and were under compensated for their time worked.

21 10. As a result of their rigorous work schedules, PLAINTIFFS and other
22 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
23 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and
24 other CALIFORNIA CLASS Members were required from time to time to perform work as
25 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
26 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and
27 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
28 which these employees were required by DEFENDANT to work ten (10) hours of work.

1 PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
2 without additional compensation and in accordance with DEFENDANT's corporate policy and
3 practice.

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

24 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
25 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
26 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
27 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
28 all time worked, meaning the time during which an employee was subject to the control of an

1 employer, including all the time the employee was permitted or suffered to permit this work.
2 DEFENDANT required these employees to work off the clock without paying them for all the
3 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
4 known that PLAINTIFFS and the other members of the CALIFORNIA CLASS were under
5 compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS
6 Members forfeited time worked by working without their time being accurately recorded and
7 without compensation at the applicable minimum wage and overtime wage rates. To the extent
8 that the time worked off the clock did not qualify for overtime premium payment,
9 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
10 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

21 14. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
22 Members as a business expense, were required by DEFENDANT to use their own personal
23 cellular phones as a result of and in furtherance of their job duties as employees for
24 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
25 associated with the use of their personal cellular phones for DEFENDANT's benefit.
26 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
27 DEFENDANT to use their personal cell phones for work related issues. Further, from time to
28 time, PLAINTIFFS and other CALIFORNIA CLASS Members as a business expense, were

1 required by DEFENDANT to travel as a result of and in furtherance of their job duties as
2 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for
3 the all the costs associated with this traveling for DEFENDANT. As a result, in the course of
4 their employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
5 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
6 related to the use of their personal cellular phones and travel all on behalf of and for the benefit
7 of DEFENDANT.

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

19 16. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
21 intentionally and knowingly failed to compensate PLAINTIFFS and the other members of the
22 CALIFORNIA CLASS for missed meal and rest periods. This policy and practice of
23 DEFENDANT is intended to purposefully avoid the payment for all time worked as required
24 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
25 over competitors who complied with the law. To the extent equitable tolling operates to toll
26 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
27 PERIOD should be adjusted accordingly.

28 17. By reason of this conduct applicable to PLAINTIFFS and all CALIFORNIA

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

10 18. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
11 required off-duty meal and rest breaks to them as required by the applicable Wage Order and
12 Labor Code and failed to pay them all minimum and overtime wages due to them.
13 DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest
14 breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for their missed meal and
15 rest breaks. The nature of the work performed by the PLAINTIFFS did not prevent them from
16 being relieved of all of their duties for the legally required off-duty meal periods. As a result,
17 DEFENDANT’s failure to provide PLAINTIFFS with the legally required meal periods is
18 evidenced by DEFENDANT’s business records. As a result of DEFENDANT not accurately
19 recording all missed meal and rest periods and/or minimum and overtime wages due, the wage
20 statements issued to PLAINTIFFS by DEFENDANT violated California law, and in particular,
21 Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFFS all of their
22 wages due to them and DEFENDANT has failed to pay any penalty wages owed to them under
23 California Labor Code Section 203. The amount in controversy for PLAINTIFFS individually
24 does not exceed the sum or value of \$75,000.

25 26 **JURISDICTION AND VENUE**

27 19. This Court has jurisdiction over this Action pursuant to California Code of Civil
28 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This

1 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
2 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT, and
5 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
6 in this County and/or conducts substantial business in this County, and (ii) committed the
7 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

8
9 **THE CALIFORNIA CLASS**

10 21. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
12 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
13 all individuals who are or previously were employed by DEFENDANT in California and
14 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
15 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
16 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
17 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
18 (\$5,000,000.00).

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

22 23. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
23 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
24 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
25 failed to record all meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA
26 CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required
27 employees to perform this work and permits or suffers to permit this work.

28 24. DEFENDANT has the legal burden to establish that each and every

1 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
2 required by California laws. The DEFENDANT, however, failed to have in place during the
3 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure
4 that each and every CALIFORNIA CLASS Member is paid as required by law. This common
5 business practice is applicable to each and every CALIFORNIA CLASS Member can be
6 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
7 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
8 elements of this claim.

9 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
10 CLASS Members is impracticable.

11 26. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
12 law by:

- 13 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
14 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
15 deceptively having in place company policies, practices and procedures
16 that failed to record and pay PLAINTIFFS and the other members of the
17 CALIFORNIA CLASS for all time worked, including minimum wages
18 owed and overtime wages owed for work performed by these employees;
- 19 (b) Committing an act of unfair competition in violation of the UCL, by
20 failing to provide the PLAINTIFFS and the other members of the
21 CALIFORNIA CLASS with the legally required meal and rest periods;
22 and,
- 23 (c) Committing an act of unfair competition in violation of the California
24 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
25 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
26 the CALIFORNIA CLASS members with necessary expenses incurred in
27 the discharge of their job duties.

28 27. This Class Action meets the statutory prerequisites for the maintenance of a Class

1 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 2 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
3 that the joinder of all such persons is impracticable and the disposition of
4 their claims as a class will benefit the parties and the Court;
- 5 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
6 that are raised in this Complaint are common to the CALIFORNIA
7 CLASS will apply to every member of the CALIFORNIA CLASS;
- 8 (c) The claims of the representative PLAINTIFFS are typical of the claims of
9 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
10 other members of the CALIFORNIA CLASS, was classified as a non-
11 exempt employee paid on an hourly basis who was subjected to the
12 DEFENDANT's deceptive practice and policy which failed to provide the
13 legally required meal and rest periods to the CALIFORNIA CLASS and
14 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA
15 CLASS. PLAINTIFFS sustained economic injury as a result of
16 DEFENDANT's employment practices. PLAINTIFFS and the members
17 of the CALIFORNIA CLASS were and are similarly or identically harmed
18 by the same unlawful, deceptive, and unfair misconduct engaged in by
19 DEFENDANT; and,
- 20 (d) The representative PLAINTIFFS will fairly and adequately represent and
21 protect the interest of the CALIFORNIA CLASS, and have retained
22 counsel who are competent and experienced in Class Action litigation.
23 There are no material conflicts between the claims of the representative
24 PLAINTIFFS and the members of the CALIFORNIA CLASS that would
25 make class certification inappropriate. Counsel for the CALIFORNIA
26 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
27 Members.

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

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

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

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

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

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

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

28 (c) Common questions of law and fact exist as to the members of the

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

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

1 assert their claims through a representative; and,

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

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

- 9 (a) The questions of law and fact common to the CALIFORNIA CLASS
10 predominate over any question affecting only individual CALIFORNIA
11 CLASS Members because the DEFENDANT's employment practices are
12 applied with respect to the CALIFORNIA CLASS;
- 13 (b) A Class Action is superior to any other available method for the fair and
14 efficient adjudication of the claims of the members of the CALIFORNIA
15 CLASS because in the context of employment litigation a substantial
16 number of individual CALIFORNIA CLASS Members will avoid
17 asserting their rights individually out of fear of retaliation or adverse
18 impact on their employment;
- 19 (c) The members of the CALIFORNIA CLASS are so numerous that it is
20 impractical to bring all members of the CALIFORNIA CLASS before the
21 Court;
- 22 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
23 able to obtain effective and economic legal redress unless the action is
24 maintained as a Class Action;
- 25 (e) There is a community of interest in obtaining appropriate legal and
26 equitable relief for the acts of unfair competition, statutory violations and
27 other improprieties, and in obtaining adequate compensation for the
28 damages and injuries which DEFENDANT's actions have inflicted upon

1 the CALIFORNIA CLASS;

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

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

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

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

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

19
20 **THE CALIFORNIA LABOR SUB-CLASS**

21 31. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and
22 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
23 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
24 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
25 to the filing of the complaint and ending on the date as determined by the Court (the
26 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
27 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
28 Members is under five million dollars (\$5,000,000.00).

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

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

18 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
19 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

22 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
23 minimum and overtime compensation due to members of the
24 CALIFORNIA LABOR SUB-CLASS and wages due for missed meal and
25 rest breaks in violation of the California Labor Code and California
26 regulations and the applicable California Wage Order;

27 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR SUB-CLASS with accurate

1 itemized wage statements;

2 (c) Whether DEFENDANT has engaged in unfair competition by the
3 above-listed conduct;

4 (d) The proper measure of damages and penalties owed to the members of the
5 CALIFORNIA LABOR SUB-CLASS; and,

6 (e) Whether DEFENDANT's conduct was willful.

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

9 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
10 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
11 CLASS all wages due for overtime worked, for which DEFENDANT is
12 liable pursuant to Cal. Lab. Code § 1194;

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

17 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
18 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
19 itemized statement in writing showing the corresponding correct amount
20 of wages earned by the employee;

21 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
22 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
23 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
24 meal breaks and the legally required off-duty rest breaks;

25 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
26 when an employee is discharged or quits from employment, the employer
27 must pay the employee all wages due without abatement, by failing to
28 tender full payment and/or restitution of wages owed or in the manner

1 required by California law to the members of the CALIFORNIA LABOR
2 SUB-CLASS who have terminated their employment; and,

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

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

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

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

- 16 (c) The claims of the representative PLAINTIFFS are typical of the claims of
17 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS,
18 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
19 were non-exempt employees paid on an hourly basis who was subjected
20 to the DEFENDANT's practice and policy which failed to pay the correct
21 amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's
22 employment practices. PLAINTIFFS and the members of the
23 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
24 harmed by the same unlawful, deceptive, and unfair misconduct engaged
25 in by DEFENDANT; and,

- 26 (d) The representative PLAINTIFFS will fairly and adequately represent and
27 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
28

1 retained counsel who are competent and experienced in Class Action
2 litigation. There are no material conflicts between the claims of the
3 representative PLAINTIFFS and the members of the CALIFORNIA
4 LABOR SUB-CLASS that would make class certification inappropriate.
5 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
6 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

13 1) Inconsistent or varying adjudications with respect to individual
14 members of the CALIFORNIA LABOR SUB-CLASS which would
15 establish incompatible standards of conduct for the parties
16 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

- 8 1) The interests of the members of the CALIFORNIA LABOR SUB-
9 CLASS in individually controlling the prosecution or defense of
10 separate actions in that the substantial expense of individual
11 actions will be avoided to recover the relatively small amount of
12 economic losses sustained by the individual CALIFORNIA
13 LABOR SUB-CLASS Members when compared to the substantial
14 expense and burden of individual prosecution of this litigation;
- 15 2) Class certification will obviate the need for unduly duplicative
16 litigation that would create the risk of:

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

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

- 26 3) In the context of wage litigation because a substantial number of
27 individual CALIFORNIA LABOR SUB-CLASS Members will
28 avoid asserting their legal rights out of fear of retaliation by

1 DEFENDANT, which may adversely affect an individual's job
2 with DEFENDANT or with a subsequent employer, the Class
3 Action is the only means to assert their claims through a
4 representative; and,

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

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

- 12 (a) The questions of law and fact common to the CALIFORNIA LABOR
13 SUB-CLASS predominate over any question affecting only individual
14 CALIFORNIA LABOR SUB-CLASS Members;
- 15 (b) A Class Action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the members of the CALIFORNIA
17 LABOR SUB-CLASS because in the context of employment litigation a
18 substantial number of individual CALIFORNIA LABOR SUB-CLASS
19 Members will avoid asserting their rights individually out of fear of
20 retaliation or adverse impact on their employment;
- 21 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
22 numerous that it is impractical to bring all members of the CALIFORNIA
23 LABOR SUB-CLASS before the Court;
- 24 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
25 Members, will not be able to obtain effective and economic legal redress
26 unless the action is maintained as a Class Action;
- 27 (e) There is a community of interest in obtaining appropriate legal and
28 equitable relief for the acts of unfair competition, statutory violations and

1 other improprieties, and in obtaining adequate compensation for the
 2 damages and injuries which DEFENDANT's actions have inflicted upon
 3 the CALIFORNIA LABOR SUB-CLASS;

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

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

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
 12 ascertainable from the business records of DEFENDANT. The
 13 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
 14 CLASS Members who worked for DEFENDANT in California at any
 15 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

21 FIRST CAUSE OF ACTION

22 **For Unlawful Business Practices**

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

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

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

28 41. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.

1 Code § 17021.

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

6 Any person who engages, has engaged, or proposes to engage in unfair
7 competition may be enjoined in any court of competent jurisdiction. The court
8 may make such orders or judgments, including the appointment of a receiver, as
9 may be necessary to prevent the 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.

10 Cal. Bus. & Prof. Code § 17203.

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

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

24 45. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT’s policy and practice failed to provide the legally mandated
26 meal and rest periods, the required amount of compensation for missed meal and rest periods
27 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
28 business expenses incurred due to a business practice that cannot be justified, pursuant to the

1 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
2 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
3 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
4 withheld.

5 46. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
6 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
7 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

9 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
10 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
11 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
12 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

13 48. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
14 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
15 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
16 for each workday in which a second off-duty meal period was not timely provided for each ten
17 (10) hours of work.

18 49. PLAINTIFFS further demand on behalf of themselves and each member of the
19 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
20 duty paid rest period was not timely provided as required by law.

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

27 51. All the acts described herein as violations of, among other things, the Industrial
28 Welfare Commission Wage Orders, the California Code of Regulations, and the California

1 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
2 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
3 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

4 52. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
5 to, and do, seek such relief as may be necessary to restore to them the money and property
6 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
7 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
8 unfair business practices, including earned but unpaid wages for all time worked.

9 53. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
10 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
11 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
12 engaging in any unlawful and unfair business practices in the future.

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

20
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**
25 **and Against All Defendants)**

26 55. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
28 paragraphs of this Complaint.

1 56. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
3 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
4 accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS
5 Members.

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

8 58. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
9 commission is the minimum wage to be paid to employees, and the payment of a less wage than
10 the minimum so fixed is unlawful.

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

13 60. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
14 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
15 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
16 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
17 CALIFORNIA LABOR SUB-CLASS.

18 61. DEFENDANT's unlawful wage and hour practices manifested, without
19 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
20 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the
21 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

22 62. In committing these violations of the California Labor Code, DEFENDANT
23 inaccurately calculated the correct time worked and consequently underpaid the actual time
24 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
25 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
26 benefits in violation of the California Labor Code, the Industrial Welfare Commission
27 requirements and other applicable laws and regulations.

28 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,

1 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
2 receive the correct minimum wage compensation for their time worked for DEFENDANT.

3 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
4 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
5 Members to work without paying them for all the time they were under DEFENDANT's
6 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
7 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
8 they were entitled to, constituting a failure to pay all earned wages.

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

15 66. DEFENDANT knew or should have known that PLAINTIFFS and the other
16 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
17 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
18 to not pay employees for their labor as a matter of company policy, practice and procedure, and
19 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
20 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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

9 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
11 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
12 including overtime work.

13 75. DEFENDANT's unlawful wage and hour practices manifested, without
14 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
15 implementing a policy and practice that failed to accurately record overtime worked by
16 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
17 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
18 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
19 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
20 workweek.

21 76. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
23 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
24 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
25 of the California Labor Code, the Industrial Welfare Commission requirements and other
26 applicable laws and regulations.

27 77. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive full compensation for overtime worked.

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

10 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
11 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
12 overtime worked that they are entitled to, constituting a failure to pay all earned wages..

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

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

26 82. DEFENDANT knew or should have known that PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
28 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,

1 to not pay employees for their labor as a matter of company policy, practice and procedure, and
2 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
3 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

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FOURTH CAUSE OF ACTION**For Failure to Provide Required Meal Periods****[Cal. Lab. Code §§ 226.7 & 512]****(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)**

85. PLAINTIFFS, 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.

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

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

1 each workday that a meal period was not provided.

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

6
7 **FIFTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

10 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
11 **Defendants)**

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

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

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

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

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

7 **SIXTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 2802]**

10 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
11 **Defendants)**

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

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

16 An employer shall indemnify his or her employee for all necessary expenditures
17 or losses incurred by the employee in direct consequence of the discharge of his
18 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.

19 95. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
20 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
21 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
22 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR
23 SUB-CLASS members for expenses which included, but were not limited to, costs related to
24 using their personal cellular phones all on behalf of and for the benefit of DEFENDANT.
25 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
26 DEFENDANT to use their personal cell phones to respond to work related issues.
27 DEFENDANT's policy, practice and procedure was to not reimburse PLAINTIFFS and the
28

1 CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal
2 cellular phones for DEFENDANT within the course and scope of their employment for
3 DEFENDANT. Further, from time to time, PLAINTIFFS and other CALIFORNIA CLASS
4 Members were required by DEFENDANT to use their personal vehicle to travel for Defendant,
5 in order to perform work for DEFENDANT's benefit. PLAINTIFFS and other members of the
6 CALIFORNIA CLASS were not reimbursed or indemnified by DEFENDANT for the cost
7 associated with the use of their personal vehicles. As a result, in the course of their
8 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
9 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
10 related to the use of their personal cellular phones and travel all on behalf of and for the benefit
11 of DEFENDANT. These expenses were necessary to complete their principal job duties.
12 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
13 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and
14 the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
15 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these
16 expenses as an employer is required to do under the laws and regulations of California.

17 96. PLAINTIFFS therefore demands reimbursement for expenditures or losses
18 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
19 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
20 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

21 **SEVENTH CAUSE OF ACTION**

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

23 **[Cal. Lab. Code § 226]**

24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**

26 97. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
28

1 paragraphs of this Complaint.

2 98. Cal. Labor Code § 226 provides that an employer must furnish employees
3 with
4 an “accurate itemized” statement in writing showing:

- 5 (1) gross wages earned,
6 (2) total hours worked by the employee, except for any employee whose
7 compensation is solely based on a salary and who is exempt from payment of
8 overtime under subdivision (a) of Section 515 or any applicable order of the
9 Industrial Welfare Commission,
10 (3) the number of piecerate units earned and any applicable piece rate if the
11 employee is paid on a piece-rate basis,
12 (4) all deductions, provided that all deductions made on written orders of the
13 employee may be aggregated and shown as one item,
14 (5) net wages earned,
15 (6) the inclusive dates of the period for which the employee is paid,
16 (7) the name of the employee and his or her social security number, except that by
17 January 1, 2008, only the last four digits of his or her social security number or an
18 employee identification number other than a social security number may be shown on
19 the itemized statement,
20 (8) the name and address of the legal entity that is the employer, and
21 (9) all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee.

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

100. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
Code § 226, causing injury and damages to PLAINTIFFS and the other members of the

1 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
 2 expended calculating the correct wages for all missed meal and rest breaks and the amount
 3 of employment taxes which were not properly paid to state and federal tax authorities.
 4 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
 5 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
 6 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
 7 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
 8 226, in an amount according to proof at the time of trial (but in no event more than four
 9 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
 10 CALIFORNIA LABOR SUB-CLASS herein).

11 **EIGHTH CAUSE OF ACTION**

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

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

14 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
 15 **Defendants)**

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

19 102. Cal. Lab. Code § 200 provides that:

20 As used in this article:

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

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

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

1 104. Cal. Lab. Code § 202 provides, in relevant part, that:

2 If an employee not having a written contract for a definite period quits his or
3 her employment, his or her wages shall become due and payable not later than
4 72 hours thereafter, unless the employee has given 72 hours previous notice of
5 his or her intention to quit, in which case the employee is entitled to his or her
6 wages at the time of quitting. Notwithstanding any other provision of law, an
7 employee who quits without providing a 72-hour notice shall be entitled to
8 receive payment by mail if he or she so requests and designates a mailing
9 address. The date of the mailing shall constitute the date of payment for
10 purposes of the requirement to provide payment within 72 hours of the notice
11 of quitting.

12 105. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
13 SUB-CLASS Members' employment contract.

14 106. Cal. Lab. Code § 203 provides:

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

21 107. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
22 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
23 these employees who missed meal and rest breaks, as required by law.

24 108. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
25 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has
26 terminated, PLAINTIFFS demand up to thirty days of pay as penalty for not paying all
27 wages due at time of termination for all employees who terminated employment during the
28 CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment of
all wages due, plus interest and statutory costs as allowed by law.

NINTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFFS and Against All Defendants)

109. PLAINTIFFS incorporate by reference the allegations set forth in the prior

1 paragraphs as though fully set forth at this point.

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

12 111. PLAINTIFFS, and such persons that may be added from time to time who
13 satisfy the requirements and exhaust the administrative procedures under the Private
14 Attorney General Act, bring this Representative Action on behalf of the State of California
15 with respect to themselves and all individuals who worked for DEFENDANT in California
16 and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the
17 time period of April 15, 2019 until a date as determined by the Court (the "PAGA
18 PERIOD").

19 112. On April 15, 2020, PLAINTIFFS gave written notice by electronic mail to the
20 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
21 employer of the specific provisions of this code alleged to have been violated as required by
22 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
23 herein. The statutory waiting period for PLAINTIFFS to add these allegations to the
24 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now
25 commence a representative civil action under PAGA pursuant to Section 2699 as the proxies
26 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

27 113. The policies, acts and practices heretofore described were and are an unlawful
28 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the

1 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
 2 properly record and provide legally required meal and rest periods, (c) failed to pay
 3 overtime wages, (d) failed to pay minimum wages, (e) failed to pay wages when due and (f)
 4 failed to reimburse employees for required expenses, all in violation of the applicable Labor
 5 Code sections listed in Labor Code Sections §§201, 202, 203, 204 *et seq.*, 210, 226(a),
 6 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
 7 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial
 8 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹

9 PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor Code
 10 Private Attorney General Act of 2004 as the representatives of the State of California for the
 11 illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

12 114. All of the conduct and violations alleged herein occurred during the
 13 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
 14 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFFS seek penalties for those
 15 violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v.*
 16 *Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

PRAYER FOR RELIEF

19 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
 20 severally, as follows:

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

27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor Code
 28 §558(a)(3).

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS; and,
- 4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
- 7 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
9 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS
10 as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 11 B) Compensatory damages, according to proof at trial, including compensatory
12 damages for minimum and overtime compensation due PLAINTIFFS and the
13 other members of the CALIFORNIA LABOR SUB-CLASS, during the
14 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
15 at the statutory rate;
- 16 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
17 in which a violation occurs and one hundred dollars (\$100) per each member of
18 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
19 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
20 an award of costs for violation of Cal. Lab. Code § 226;
- 21 D) The wages of all terminated employees from the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
23 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 24 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
25 the applicable IWC Wage Order;
- 26 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
27 1197; and,
- 28 G) The amount of the expenses PLAINTIFFS and each member of the

1 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
2 plus interest, and costs of suit.

3 3. On behalf of the State of California and with respect to all AGGRIEVED
4 EMPLOYEES:

5 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
6 General Act of 2004.

7 4. On all claims:

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

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

10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
11 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
12 §2802.

13

14 Dated: September 25, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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By: 

Norman B. Blumenthal
Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: September 25, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiffs

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.comWRITERS EXT:
1004April 15, 2020
CA1968**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency	Lifesafar of Northern California
Online Filing	Certified Mail # 70191120000066524615
	David Nico
	82 Twin Oaks Drive
	Monterey, CA 93940

Re: Notice Of Violations Of California Labor Code Sections §§ 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 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Lifesafer of Northern California in California and classified as non-exempt employees during the time period of April 15, 2019 until a date as determined by the Court. Our offices represent Plaintiffs Gustavo Dominguez and Matthew Scott (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against Defendant Lifesafer of Northern California (“Defendant”). Plaintiff Dominguez was employed by Defendant in California from March of 2019 to November of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Plaintiff Scott was employed by Defendant in California from July of 2019 to October of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition,

when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendants failed to advise Plaintiffs 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 Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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 Plaintiffs 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 1 1070(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 Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs 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 Plaintiffs 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 Plaintiffs, 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 Statue of 2004 on behalf of Plaintiffs 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.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

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6 Attorneys for Plaintiffs

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF MONTEREY**

9

10 GUSTAVO DOMINGUEZ and MATTHEW
SCOTT, individuals, on behalf of themselves
11 and on behalf of all persons similarly situated,

12
13 Plaintiffs,

14 vs.

15 LIFESAFER OF NORTHERN CALIFORNIA,
a Corporation; and DOES 1 through 50,
16 inclusive,

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18 Defendants.

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Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

1 Plaintiffs Gustavo Dominguez and Matthew Scott (“PLAINTIFFS”), individuals, on
2 behalf of themselves and all other similarly situated current and former employees allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. DEFENDANT Lifesafer of Northern California (“DEFENDANT”) is a
8 corporation that at all relevant times mentioned herein conducted and continues to conduct
9 substantial business in the state of California.

10 2. DEFENDANT is a privately held corporation which has provided ignition
11 interlock device installation services to its customers since 1992.

12 3. Plaintiff Dominguez was employed by DEFENDANT in California as an
13 interlock installer from March of 2019 to November of 2019 and was at all times classified by
14 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
15 required meal and rest periods and payment of minimum and overtime wages due for all time
16 worked.

17 4. Plaintiff Scott was employed by DEFENDANT in California as an interlock
18 installer from July of 2019 to October of 2019 and was at all times classified by DEFENDANT
19 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and
20 rest periods and payment of minimum and overtime wages due for all time worked.

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

28 6. PLAINTIFFS bring this Class Action on behalf of themselves and a

1 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
2 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy
3 and practice which failed to lawfully compensate these employees. DEFENDANT's uniform
4 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
5 whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other
6 members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
7 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
8 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS
9 who have been economically injured by DEFENDANT's past and current unlawful conduct,
10 and all other appropriate legal and equitable relief.

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

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

28

THE CONDUCT

1
2 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
3 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
4 meaning the time during which an employee is subject to the control of an employer, including
5 all the time the employee is suffered or permitted to work. DEFENDANT required
6 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the
7 time they were under DEFENDANT's control. From time to time, DEFENDANT required
8 PLAINTIFFS and CALIFORNIA CLASS Members to work off the clock without paying them
9 for all the time they were under DEFENDANT's control performing post-shift duties,
10 specifically by failing to provide enough labor hours to accomplish all the job tasks that
11 DEFENDANT expected PLAINTIFFS and CALIFORNIA CLASS Members to complete.
12 PLAINTIFFS and CALIFORNIA CLASS Members would clock out of DEFENDANT's
13 timekeeping system, in order to perform additional work for DEFENDANT. As a result,
14 PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by working
15 without their time being accurately recorded and without compensation at the applicable
16 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
17 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by
18 DEFENDANT's business records. DEFENDANT knew or should have known that
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were working
20 off the clock and were under compensated for their time worked.

21 10. As a result of their rigorous work schedules, PLAINTIFFS and other
22 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
23 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and
24 other CALIFORNIA CLASS Members were required from time to time to perform work as
25 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
26 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and
27 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
28 which these employees were required by DEFENDANT to work ten (10) hours of work.

1 PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
2 without additional compensation and in accordance with DEFENDANT's strict corporate policy
3 and practice.

4 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
5 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
6 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
7 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
8 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
9 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
10 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
11 or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also
12 not provided with one hour wages in lieu thereof.

13 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
14 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
15 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
16 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
17 all time worked, meaning the time during which an employee was subject to the control of an
18 employer, including all the time the employee was permitted or suffered to permit this work.
19 DEFENDANT required these employees to work off the clock without paying them for all the
20 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
21 known that PLAINTIFFS and the other members of the CALIFORNIA CLASS were under
22 compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS
23 Members forfeited time worked by working without their time being accurately recorded and
24 without compensation at the applicable minimum wage and overtime wage rates. To the extent
25 that the time worked off the clock did not qualify for overtime premium payment,
26 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
27 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

28 13. DEFENDANT as a matter of corporate policy, practice and procedure,

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

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

26 15. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
27 other members of the CALIFORNIA CLASS with complete and accurate wage statements
28 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.

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

9 16. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
11 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
12 failed to compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for
13 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
14 to purposefully avoid the payment for all time worked as required by California law which
15 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
16 complied with the law. To the extent equitable tolling operates to toll claims by the
17 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be
18 adjusted accordingly.

19 17. By reason of this uniform conduct applicable to PLAINTIFFS and all
20 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
21 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
22 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
23 calculate and record all missed meal and rest periods by PLAINTIFFS and other CALIFORNIA
24 CLASS Members. The proper recording of these employees' missed meal and rest breaks is
25 the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
26 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
27 required compensation for work performed by the members of the CALIFORNIA CLASS and
28 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

THE CALIFORNIA CLASS

1
2 21. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
3 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
4 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
5 all individuals who are or previously were employed by DEFENDANT in California and
6 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
7 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
8 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
9 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
10 (\$5,000,000.00).

11 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
12 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
13 accordingly.

14 23. DEFENDANT, as a matter of company policy, practice and procedure, and in
15 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
16 requirements, and the applicable provisions of California law, intentionally, knowingly, and
17 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
18 and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even
19 though DEFENDANT enjoyed the benefit of this work, required employees to perform this
20 work and permits or suffers to permit this work.

21 24. DEFENDANT has the legal burden to establish that each and every
22 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
23 required by California laws. The DEFENDANT, however, as a matter of uniform and
24 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
25 PERIOD and still fails to have in place a policy or practice to ensure that each and every
26 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
27 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
28 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§

1 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

2 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
3 CLASS Members is impracticable.

4 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
5 California law by:

6 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
7 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
8 deceptively having in place company policies, practices and procedures
9 that uniformly and systematically failed to record and pay PLAINTIFFS
10 and the other members of the CALIFORNIA CLASS for all time worked,
11 including minimum wages owed and overtime wages owed for work
12 performed by these employees;

13 (b) Committing an act of unfair competition in violation of the UCL, by
14 failing to provide the PLAINTIFFS and the other members of the
15 CALIFORNIA CLASS with the legally required meal and rest periods;
16 and,

17 (c) Committing an act of unfair competition in violation of the California
18 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
19 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
20 the CALIFORNIA CLASS members with necessary expenses incurred in
21 the discharge of their job duties.

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

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

27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
28 that are raised in this Complaint are common to the CALIFORNIA

1 CLASS will apply uniformly to every member of the CALIFORNIA
2 CLASS;

3 (c) The claims of the representative PLAINTIFFS are typical of the claims of
4 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
5 other members of the CALIFORNIA CLASS, was classified as a non-
6 exempt employee paid on an hourly basis who was subjected to the
7 DEFENDANT's deceptive practice and policy which failed to provide the
8 legally required meal and rest periods to the CALIFORNIA CLASS and
9 thereby systematically underpaid compensation to PLAINTIFFS and
10 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
11 result of DEFENDANT's employment practices. PLAINTIFFS and the
12 members of the CALIFORNIA CLASS were and are similarly or
13 identically harmed by the same unlawful, deceptive, unfair and pervasive
14 pattern of misconduct engaged in by DEFENDANT; and,

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

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

25 (a) Without class certification and determination of declaratory, injunctive,
26 statutory and other legal questions within the class format, prosecution of
27 separate actions by individual members of the CALIFORNIA CLASS will
28 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 parties opposing the CALIFORNIA CLASS; and/or,
- 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;
- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- (c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
- A. 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,
- B. 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;
- 3) 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,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of

1 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

4 (a) The questions of law and fact common to the CALIFORNIA CLASS
5 predominate over any question affecting only individual CALIFORNIA
6 CLASS Members because the DEFENDANT's employment practices are
7 uniform and systematically applied with respect to the CALIFORNIA
8 CLASS;

9 (b) A Class Action is superior to any other available method for the fair and
10 efficient adjudication of the claims of the members of the CALIFORNIA
11 CLASS because in the context of employment litigation a substantial
12 number of individual CALIFORNIA CLASS Members will avoid
13 asserting their rights individually out of fear of retaliation or adverse
14 impact on their employment;

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

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

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

26 (f) There is a community of interest in ensuring that the combined assets of
27 DEFENDANT are sufficient to adequately compensate the members of
28

- 1 the CALIFORNIA CLASS for the injuries sustained;
- 2 (g) DEFENDANT has acted or refused to act on grounds generally applicable
- 3 to the CALIFORNIA CLASS, thereby making final class-wide relief
- 4 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 5 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
- 6 the business records of DEFENDANT; and,
- 7 (i) Class treatment provides manageable judicial treatment calculated to bring
- 8 a efficient and rapid conclusion to all litigation of all wage and hour
- 9 related claims arising out of the conduct of DEFENDANT as to the
- 10 members of the CALIFORNIA CLASS.

11 30. DEFENDANT maintains records from which the Court can ascertain and identify

12 by job title each of DEFENDANT's employees who as have been systematically, intentionally

13 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein

14 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job

15 titles of similarly situated employees when they have been identified.

16

17 **THE CALIFORNIA LABOR SUB-CLASS**

18 31. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and

19 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the

20 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California

21 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior

22 to the filing of the complaint and ending on the date as determined by the Court (the

23 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.

24 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS

25 Members is under five million dollars (\$5,000,000.00).

26 32. DEFENDANT, as a matter of company policy, practice and procedure, and in

27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

28 requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
2 compensation for the time worked by PLAINTIFFS and the other members of the
3 CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even
4 though DEFENDANT enjoyed the benefit of this work, required employees to perform this
5 work and permitted or suffered to permit this work. DEFENDANT has uniformly denied these
6 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
7 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
8 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
9 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

10 33. DEFENDANT maintains records from which the Court can ascertain and identify
11 by name and job title, each of DEFENDANT's employees who have been systematically,
12 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
13 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include
14 any additional job titles of similarly situated employees when they have been identified.

15 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
16 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 19 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
20 minimum and overtime compensation due to members of the
21 CALIFORNIA LABOR SUB-CLASS and wages due for missed meal
22 and rest breaks in violation of the California Labor Code and California
23 regulations and the applicable California Wage Order;
- 24 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS with accurate
26 itemized wage statements;
- 27 (c) Whether DEFENDANT has engaged in unfair competition by the
28 above-listed conduct;

1 (d) The proper measure of damages and penalties owed to the members of the
2 CALIFORNIA LABOR SUB-CLASS; and,

3 (e) Whether DEFENDANT's conduct was willful.

4 36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
5 under California law by:

6 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
7 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
8 CLASS all wages due for overtime worked, for which DEFENDANT is
9 liable pursuant to Cal. Lab. Code § 1194;

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

14 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
15 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
16 itemized statement in writing showing the corresponding correct amount
17 of wages earned by the employee;

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

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

28 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and

1 the CALIFORNIA LABOR SUB-CLASS members with necessary
2 expenses incurred in the discharge of their job duties.

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

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

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

13 (c) The claims of the representative PLAINTIFFS are typical of the claims of
14 each member of the CALIFORNIA LABOR SUB-CLASS.
15 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
16 SUB-CLASS, were non-exempt employees paid on an hourly basis who
17 was subjected to the DEFENDANT's practice and policy which failed to
18 pay the correct amount of wages due to the CALIFORNIA LABOR SUB-
19 CLASS. PLAINTIFFS sustained economic injury as a result of
20 DEFENDANT's employment practices. PLAINTIFFS and the members
21 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
22 identically harmed by the same unlawful, deceptive, unfair and pervasive
23 pattern of misconduct engaged in by DEFENDANT; and,

24 (d) The representative PLAINTIFFS will fairly and adequately represent and
25 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
26 retained counsel who are competent and experienced in Class Action
27 litigation. There are no material conflicts between the claims of the
28 representative PLAINTIFFS and the members of the CALIFORNIA

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

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

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

10 1) Inconsistent or varying adjudications with respect to individual
11 members of the CALIFORNIA LABOR SUB-CLASS which
12 would establish incompatible standards of conduct for the parties
13 opposing the CALIFORNIA LABOR SUB-CLASS; or,

14 2) Adjudication with respect to individual members of the
15 CALIFORNIA LABOR SUB-CLASS which would as a practical
16 matter be dispositive of interests of the other members not party to
17 the adjudication or substantially impair or impede their ability to
18 protect their interests.

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

26 (c) Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28 violations of California Law as listed above, and predominate over any

1 question affecting only individual CALIFORNIA LABOR SUB-CLASS
2 Members, and a Class Action is superior to other available methods for
3 the fair and efficient adjudication of the controversy, including
4 consideration of:

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

1 representative; and,

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

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

- 9 (a) The questions of law and fact common to the CALIFORNIA LABOR
10 SUB-CLASS predominate over any question affecting only individual
11 CALIFORNIA LABOR SUB-CLASS Members;
- 12 (b) A Class Action is superior to any other available method for the fair and
13 efficient adjudication of the claims of the members of the CALIFORNIA
14 LABOR SUB-CLASS because in the context of employment litigation a
15 substantial number of individual CALIFORNIA LABOR SUB-CLASS
16 Members will avoid asserting their rights individually out of fear of
17 retaliation or adverse impact on their employment;
- 18 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
19 numerous that it is impractical to bring all members of the CALIFORNIA
20 LABOR SUB-CLASS before the Court;
- 21 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
22 Members, will not be able to obtain effective and economic legal redress
23 unless the action is maintained as a Class Action;
- 24 (e) There is a community of interest in obtaining appropriate legal and
25 equitable relief for the acts of unfair competition, statutory violations and
26 other improprieties, and in obtaining adequate compensation for the
27 damages and injuries which DEFENDANT's actions have inflicted upon
28 the CALIFORNIA LABOR SUB-CLASS;

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of
3 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally applicable
5 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
6 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
7 CLASS as a whole;
- 8 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
9 ascertainable from the business records of DEFENDANT. The
10 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
11 CLASS Members who worked for DEFENDANT in California at any
12 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to bring
14 a efficient and rapid conclusion to all litigation of all wage and hour
15 related claims arising out of the conduct of DEFENDANT as to the
16 members of the CALIFORNIA LABOR SUB-CLASS.

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

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

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

22 40. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

25 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
26 Code § 17021.

27 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair
4 competition may be enjoined in any court of competent jurisdiction. The court
5 may make such orders or judgments, including the appointment of a receiver, as
6 may be necessary to prevent the 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.

7 Cal. Bus. & Prof. Code § 17203.

8 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
9 engage in a business practice which violates California law, including but not limited to, the
10 applicable Industrial Wage Order(s), the California Code of Regulations and the California
11 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1 , 1198 & 2802,
12 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
13 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
14 unfair competition, including restitution of wages wrongfully withheld.

15 44. By the conduct alleged herein, DEFENDANT's practices were unlawful and
16 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
17 unscrupulous or substantially injurious to employees, and were without valid justification or
18 utility for which this Court should issue equitable and injunctive relief pursuant to Section
19 17203 of the California Business & Professions Code, including restitution of wages wrongfully
20 withheld.

21 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
22 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
23 mandated meal and rest periods, the required amount of compensation for missed meal and rest
24 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
25 reimburse business expenses incurred due to a systematic business practice that cannot be
26 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
27 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
28 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including

1 restitution of wages wrongfully withheld.

2 46. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
3 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
4 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
5 DEFENDANT.

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

10 48. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
11 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
12 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
13 for each workday in which a second off-duty meal period was not timely provided for each ten
14 (10) hours of work.

15 49. PLAINTIFFS further demand on behalf of themselves and each member of the
16 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
17 duty paid rest period was not timely provided as required by law.

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

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

1 to accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS
2 Members.

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

5 58. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 the minimum so fixed is unlawful.

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

10 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
11 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
12 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
13 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
14 other members of the CALIFORNIA LABOR SUB-CLASS.

15 61. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
17 result of implementing a uniform policy and practice that denies accurate compensation to
18 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards
19 to minimum wage pay.

20 62. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately calculated the correct time worked and consequently underpaid the actual time
22 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
23 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
24 benefits in violation of the California Labor Code, the Industrial Welfare Commission
25 requirements and other applicable laws and regulations.

26 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
28 receive the correct minimum wage compensation for their time worked for DEFENDANT.

1 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
2 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
3 that they were entitled to, constituting a failure to pay all earned wages.

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

10 66. DEFENDANT knew or should have known that PLAINTIFFS and the other
11 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
12 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
13 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
14 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
15 pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the
16 correct minimum wages for their time worked.

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

25 68. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
27 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
28 provided by the California Labor Code and/or other applicable statutes. To the extent minimum

1 wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
2 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
3 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
4 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
5 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
6 was willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA
7 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

8
9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Overtime Compensation**

11 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

17 70. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
18 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
19 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
20 to pay these employees for all overtime worked, including, work performed in excess of eight
21 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
22 workweek.

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

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

1 73. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
2 including minimum wage and overtime compensation and interest thereon, together with the
3 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
4 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

5 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
6 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
7 DEFENDANT and were not paid for all the time they worked, including overtime work.

8 75. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
10 result of implementing a uniform policy and practice that failed to accurately record overtime
11 worked by PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
12 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR
13 SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight
14 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
15 workweek.

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

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

25 78. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
26 from the overtime requirements of the law. None of these exemptions are applicable to the
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not

1 subject to a valid collective bargaining agreement that would preclude the causes of action
2 contained herein this Complaint. Rather, PLAINTIFFS brings this Action on behalf of himself
3 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
4 negotiable, non-waiveable rights provided by the State of California.

5 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
6 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
7 overtime worked that they are entitled to, constituting a failure to pay all earned wages..

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

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

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

28 83. In performing the acts and practices herein alleged in violation of California labor

1 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
 2 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
 3 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and
 4 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
 5 disregard for their legal rights, or the consequences to them, and with the despicable intent of
 6 depriving them of their property and legal rights, and otherwise causing them injury in order
 7 to increase company profits at the expense of these employees.

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

19
 20 **FOURTH CAUSE OF ACTION**

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

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

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
 24 **Defendants)**

25 85. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
 26 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
 27 paragraphs of this Complaint.

28 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time

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

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

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

25 ///

26 ///

27 ///

28 ///

1 associated with the use of their personal vehicles. As a result, in the course of their employment
 2 with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA CLASS incurred
 3 unreimbursed business expenses which included, but were not limited to, costs related to the
 4 use of their personal cellular phones and travel all on behalf of and for the benefit of
 5 DEFENDANT. These expenses were necessary to complete their principal job duties.
 6 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
 7 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and
 8 the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
 9 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these
 10 expenses as an employer is required to do under the laws and regulations of California.

11 96. PLAINTIFFS therefore demands reimbursement for expenditures or losses
 12 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
 13 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
 14 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

**(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All
 Defendants)**

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

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

- 25 (1) gross wages earned,
- 26 (2) total hours worked by the employee, except for any employee whose
 27 compensation is solely based on a salary and who is exempt from payment of
 overtime under subdivision (a) of Section 515 or any applicable order of the
 Industrial Welfare Commission,
- 28 (3) the number of piecerate units earned and any applicable piece rate if the employee

1 is paid on a piece-rate basis,
2 (4) all deductions, provided that all deductions made on written orders of the
3 employee may be aggregated and shown as one item,
4 (5) net wages earned,
5 (6) the inclusive dates of the period for which the employee is paid,
6 (7) the name of the employee and his or her social security number, except that by
7 January 1, 2008, only the last four digits of his or her social security number or an
8 employee identification number other than a social security number may be shown on
9 the itemized statement,
10 (8) the name and address of the legal entity that is the employer, and
11 (9) all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each hourly rate by the employee.

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

24 100. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
25 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
26 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
27 expended calculating the correct wages for all missed meal and rest breaks and the amount
28 of employment taxes which were not properly paid to state and federal tax authorities.
These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
226, in an amount according to proof at the time of trial (but in no event more than four

1 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
2 CALIFORNIA LABOR SUB-CLASS herein).

3
4 **EIGHTH CAUSE OF ACTION**

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

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

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

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

12 102. Cal. Lab. Code § 200 provides that:

13 As used in this article:

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

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

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

24 104. Cal. Lab. Code § 202 provides, in relevant part, that:

25 If an employee not having a written contract for a definite period quits his or
26 her employment, his or her wages shall become due and payable not later than
27 72 hours thereafter, unless the employee has given 72 hours previous notice of
28 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 payment for
purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

105. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR

1 SUB-CLASS Members' employment contract.

2 106. Cal. Lab. Code § 203 provides:

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

9 107. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
10 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
11 these employees who missed meal and rest breaks, as required by law.

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

18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
20 severally, as follows:

21 1. On behalf of the CALIFORNIA CLASS:

- 22 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
23 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 24 B) An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 26 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
27 withheld from compensation due to PLAINTIFFS and the other members of the
28 CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
for restitution of the sums incidental to DEFENDANT's violations due to

1 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

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

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

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

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

19 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
20 the applicable IWC Wage Order;

21 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
22 1197; and,

23 G) The amount of the expenses PLAINTIFFS and each member of the
24 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
25 plus interest, and costs of suit.

26 3. On all claims:

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

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

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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: April 15, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: April 15, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiffs