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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 JESSICA HERRIGAN, an individual, on
15 behalf of herself and on behalf of all persons
16 similarly situated,

16 Plaintiffs,

17 v.

18 CHILDREN'S SPECIALISTS OF SAN
19 DIEGO, A MEDICAL GROUP, INC., a
20 California Corporation; and DOES 1-50,
21 Inclusive,

21 Defendants.

Case No: 37-2021-00014044-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant CHILDREN’S SPECIALISTS OF SAN DIEGO, A MEDICAL
6 GROUP, INC. (“Defendant” or “DEFENDANT”) is a California Corporation and at all relevant
7 times mentioned herein conducted and continues to conduct substantial and regular business in
8 California.

9 2. DEFENDANT, provides medical services and specializes in providing postpartum
10 medical care to high-risk patients. DEFENDANT operates facilities throughout California,
11 including the San Diego, California location where PLAINTIFF worked.

12 3. PLAINTIFF has been employed by DEFENDANT in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods since October of
14 2015.

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

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

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

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

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

22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
27 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
28 the time they were under DEFENDANT'S control. Specifically, DEFENDANT required

1 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
2 meal break, as well as before their shift started and after their shift ended. PLAINTIFF was often
3 interrupted by work assignments during her breaks. Indeed there were many days where
4 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other
5 CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and overtime
6 compensation by working without their time being accurately recorded and without compensation
7 at the applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and
8 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked
9 is evidenced by DEFENDANT'S business records.

10 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
11 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
12 CLASS for their overtime worked. DEFENDANT systematically, unlawfully and unilaterally
13 failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and
14 other members of the CALIFORNIA CLASS in order to avoid paying these employees the correct
15 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due them for working without compensation at the correct rates. DEFENDANT's
17 uniform policy and practice to not pay the members of the CALIFORNIA CLASS the correct
18 minimum and overtime wages for all time worked in accordance with applicable law is evidenced
19 by DEFENDANT's business records.

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

24 11. The second component of PLAINTIFF's and other CALIFORNIA CLASS
25 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANT. The non-discretionary incentive program provided all
28 employees paid on an hourly basis with incentive compensation when the employees met the

1 various performance goals set by DEFENDANT. However, when calculating the regular rate of
2 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
3 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
4 rate of pay" for purposes of calculating overtime pay. Management and supervisors described the
5 incentive program to potential and new employees as part of the compensation package. Further,
6 DEFENDANT paid PLAINTIFF and other CALIFORNIA CLASS Members compensation in the
7 form of per diem and shift differential compensation. However, DEFENDANT failed to include
8 compensation for per diem and shift differential compensation into the "regular rate of pay" for
9 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by
10 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the "regular rate of
11 pay." The failure to do so has resulted in a systematic underpayment of overtime compensation
12 to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

13 12. Additionally, Pursuant to the Industrial Welfare Commission Wage Orders,
14 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all
15 their time worked, meaning the time during which an employee is subject to the control of an
16 employer, including all the time the employee is suffered or permitted to work. DEFENDANT
17 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
18 the time they were under DEFENDANT's control. Specifically, DEFENDANT required
19 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
20 meal break. PLAINTIFF was from time to time interrupted by work assignments. Further,
21 DEFENDANT from time to time required PLAINTIFF and CALIFORNIA CLASS Members to
22 clock out during what was supposed to be their off-duty meal breaks and continue to work off-
23 the-clock. Moreover, DEFENDANT has required PLAINTIFF and other CALIFORNIA CLASS
24 Members to come to work at least ten (10) minutes before their scheduled shifts in order to submit
25 to COVID-19 screenings before clocking in for work. As a result, the PLAINTIFF and other
26 CALIFORNIA CLASS Members forfeited overtime compensation by working without their time
27 being accurately recorded and without compensation at the applicable overtime rates.

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1 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
2 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

3 13. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
4 CLASS Members were also from time to time unable to take thirty (30) minute off duty meal
5 breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
6 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
7 for more than five (5) hours during some shifts without receiving a meal break. Further,
8 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
9 off-duty meal period for some workdays in which these employees were required by
10 DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and other members
11 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation
12 and in accordance with DEFENDANT's strict corporate policy and practice.

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

25 15. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
26 employees with an accurate itemized wage statement in writing showing, among other things,
27 gross wages earned and all applicable hourly rates in effect during the pay period and the
28 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT

1 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
2 gross wages earned. Aside from the violations listed above, DEFENDANT failed to issue to
3 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
4 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
5 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
6 Code § 226.

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

18 17. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
19 Members as a business expense, were required by DEFENDANT to use their own personal
20 cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT
21 but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
22 their personal cellular phones for DEFENDANT'S benefit. Specifically, PLAINTIFF and other
23 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
24 phones in order to clock in and out for work and to respond to work-related communications. As
25 a result, in the course of their employment with DEFENDANT the PLAINTIFF and other
26 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
27 included, but were not limited to, costs related to the use of their personal cellular phones all on
28 behalf of and for the benefit of DEFENDANT.

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

11 19. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to
12 them in the form of two components. One component of PLAINTIFF’s compensation was a base
13 hourly wage. The second component of PLAINTIFF’s compensation was a non-discretionary
14 incentive wage, including per-diem and shift differentia compensation. DEFENDANT paid the
15 incentive wages, so long as PLAINTIFF met certain predefined performance requirements.
16 PLAINTIFF met DEFENDANT’s predefined eligibility performance requirements in various pay
17 periods throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF
18 the incentive wages. During these pay periods in which PLAINTIFF was paid the non-
19 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for
20 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF’s
21 regular rate of pay for the purposes of calculating what should have been PLAINTIFF’s accurate
22 overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout her
23 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
24 constituted wages within the meaning of the California Labor Code and thereby should have been
25 part of PLAINTIFF’s “regular rate of pay.” As a result of the rigorous work schedule imposed
26 by DEFENDANT, PLAINTIFF was also from time to time unable to take off duty meal and rest
27 breaks and was not fully relieved of duty for her meal and rest periods. PLAINTIFF was required
28 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without

1 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
2 second off-duty meal period each workday in which they was required by DEFENDANT to work
3 ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
4 compensation and in accordance with DEFENDANT's strict corporate policy and practice. When
5 PLAINTIFF worked overtime in the same pay period they earned incentive wages and/or missed
6 meal and rest breaks, DEFENDANT also provided PLAINTIFF with a paystub that failed to
7 accurately display PLAINTIFF's correct rates of overtime pay for certain pay periods in violation
8 of Cal. Lab. Code § 226(a). The amount in controversy for PLAINTIFF individually does not
9 exceed the sum or value of \$75,000.

10 **JURISDICTION AND VENUE**

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

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

20 **THE CALIFORNIA CLASS**

21 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
22 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
23 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
24 individuals who are or previously were employed by Defendant in California and classified as
25 non-exempt employees (the "CALIFORNIA CLASS") at any time between April 6, 2016 and the
26 date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
27 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
28 dollars (\$5,000,000.00).

1 23. On May 29, 2020, due to the impact of the COVID-19 pandemic on California's
2 judicial branch, the Judicial Council of California amended Emergency Rule Number 9, which
3 currently states that: "(a) Notwithstanding any other law, the statutes of limitations and repose for
4 civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1,
5 2020...(b) Notwithstanding any other law, the statutes of limitations and repose for civil causes
6 of action that are 180 days or less are tolled from April 6, 2020, until August 3, 2020."

7 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
8 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
9 accordingly.

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

23 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
24 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay for
27 time worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
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1 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
2 permitted or suffered to permit this overtime work.

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

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

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

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

- 20 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
21 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
22 policies, practices and procedures that failed to pay all minimum and overtime
23 wages due the CALIFORNIA CLASS for all time worked, and failed to accurately
24 record the applicable rates of all overtime worked by the CALIFORNIA CLASS.
- 25 b. Committing an act of unfair competition in violation of the California Unfair
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
27 unfairly, and/or deceptively having in place a company policy, practice and
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- 1 procedure that failed to correctly compensation due to PLAINTIFF and the
- 2 members of the CALIFORNIA CLASS; and
- 3 c. Committing an act of unfair competition in violation of the California Unfair
- 4 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
- 5 mandatory meal and rest breaks to PLAINTIFF and the CALIFORNIA CLASS
- 6 members;
- 7 d. Committing an act of unfair competition in violation of the California Unfair
- 8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
- 9 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
- 10 members with necessary expenses incurred in the discharge of their job duties.

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

- 13 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
- 14 joinder of all such persons is impracticable and the disposition of their claims as a
- 15 class will benefit the parties and the Court;
- 16 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 17 raised in this Complaint are common to the CALIFORNIA CLASS will apply
- 18 uniformly to every member of the CALIFORNIA CLASS;
- 19 c. The claims of the representative PLAINTIFF are typical of the claims of each
- 20 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
- 21 the CALIFORNIA CLASS, were subjected to the uniform employment practices
- 22 of DEFENDANT and was a non-exempt employee paid on an hourly basis and
- 23 paid additional non-discretionary incentive wages who was subjected to the
- 24 DEFENDANT'S practice and policy which failed to pay the correct rate of
- 25 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
- 26 CALIFORNIA CLASS and thereby systematically under pays overtime
- 27 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
- 28 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the

1 members of the CALIFORNIA CLASS were and are similarly or identically
2 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
3 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

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

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

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

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

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

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

27 2. Adjudications with respect to individual members of the
28 CALIFORNIA CLASS would as a practical matter be dispositive

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of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

- 1 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
2 obtain effective and economic legal redress unless the action is maintained as a
3 Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable relief
5 for the acts of unfair competition, statutory violations and other improprieties, and
6 in obtaining adequate compensation for the damages and injuries which
7 DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- 8 f. There is a community of interest in ensuring that the combined assets of
9 DEFENDANT are sufficient to adequately compensate the members of the
10 CALIFORNIA CLASS for the injuries sustained;
- 11 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
12 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
13 respect to the CALIFORNIA CLASS as a whole;
- 14 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
15 business records of DEFENDANT; and
- 16 i. Class treatment provides manageable judicial treatment calculated to bring an
17 efficient and rapid conclusion to all litigation of all wage and hour related claims
18 arising out of the conduct of DEFENDANT as to the members of the
19 CALIFORNIA CLASS.

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

25 **THE CALIFORNIA LABOR SUB-CLASS**

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

1 time during the period three (3) years prior to the filing of the complaint and ending on the date
2 as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
3 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
4 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

6 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
7 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
8 thirty (30) minute meal breaks and rest periods;

9 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
10 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
11 statements;

12 e. Whether DEFENDANT has engaged in unfair competition by the above-listed
13 conduct;

14 f. The proper measure of damages and penalties owed to the members of the
15 CALIFORNIA LABOR SUB-CLASS; and

16 g. Whether DEFENDANT's conduct was willful.

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

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

27 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
28 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS

- 1 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
- 2 Lab. Code §§ 1194 and 1197;
- 3 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF
- 4 and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
- 5 pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- 6 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
- 7 the other members of the CALIFORNIA CLASS with all legally required off-duty,
- 8 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 9 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 10 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 11 statement in writing showing time worked at by the employee;
- 12 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
- 13 CALIFORNIA CLASS Members with necessary expenses incurred in the
- 14 discharge of their job duties.

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

- 17 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
- 18 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
- 19 is impracticable and the disposition of their claims as a class will benefit the parties
- 20 and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 22 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
- 23 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
- 24 CLASS;
- 25 c. The claims of the representative PLAINTIFF are typical of the claims of each
- 26 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
- 27 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
- 28 employee paid on an hourly basis and paid additional non-discretionary incentive

