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L'OREAL USA S/D, INC.

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13 FRESNO DIVISION
14

15 ANGELA CONTI and JUSTINE MORA,
16 individuals, on behalf of themselves, and
on behalf of all persons similarly situated,

17 Plaintiffs,

18 v.

19 L'OREAL USA S/D, INC., a Corporation;
20 and DOES 1 through 50, inclusive,

21 Defendant.

Case No.

**DEFENDANT L'OREAL USA S/D, INC.'S
NOTICE OF REMOVAL**

Second Amended Complaint Filed in State
Court: April 30, 2019
Fresno County Superior Court Case No.
18CECG00816

22
23 **TO THE CLERK OF THE ABOVE-ENTITLED COURT AND PLAINTIFFS:**

24 Defendant L'OREAL USA S/D, INC., a Corporation ("Defendant"), by and through
25 the undersigned counsel and pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, hereby gives notice of
26 the removal of this lawsuit from the Superior Court of the State of California, County of Fresno, to the
27 United States District Court for the Eastern District of California. In support of its Notice of Removal,
28 Defendant respectfully submits to this Honorable Court:

(No.)

DEFENDANT L'OREAL USA S/D, INC.'S
NOTICE OF REMOVAL

STATE COURT ACTION

1
2 On or about March 6, 2018, Plaintiffs Angela Conti and Justine Mora (“Plaintiffs”)
3 filed an action in the Fresno County Superior Court entitled ANGELA CONTI and JUSTINE MORA
4 v. L’OREAL USA S/D, INC., a Corporation; and Does 1 through 50, Inclusive, Superior Court of the
5 State of California in and for the County of Fresno, Case No. 18CECG00816, which, together with
6 Defendant’s Answer, and the subsequently filed First Amended Complaint and Answer thereto, is
7 attached hereto as Exhibit “A.” On April 12, 2019 the Superior Court entered an Order permitting
8 Plaintiffs to file a Second Amended Complaint and providing Defendant with thirty (30) days from
9 the date of service to respond. (Attached hereto as Exhibit “B”.) Plaintiffs subsequently filed and
10 served on Defendant the Second Amended Complaint (“SAC”) for the first time adding claims under
11 the Federal Labor Standards Act (“FLSA”), attached hereto as Exhibit “C”, on April 30, 2019. On
12 May 28, 2019, Defendant filed an Answer to the SAC, attached hereto as Exhibit “D”.

13 The SAC purports to assert eight (8) class, collective, and representative causes of
14 action for violation of California and Federal law, failure to pay overtime wages, failure to provide
15 required meal periods, failure to provide required rest periods, failure to provide itemized wage
16 statements, failure to provide wages when due, violation of the Private Attorney General Act, and a
17 separate FLSA claim for failure to pay overtime.

18 The following pleadings and Orders have also been filed with the Superior Court for
19 the County of Fresno including: a Summons, Civil Case Cover Sheet, Notice of Case Management
20 Conference, and Case Management Minute Orders. Copies of these documents are attached as Exhibit
21 “E.”

TIMELINESS OF NOTICE OF REMOVAL

22 An action may be removed from state court by filing a notice of removal, together with
23 a copy of all process, pleadings, and orders served on the defendant, within thirty days of defendant
24 receiving an “an amended pleading...from which it may first be ascertained that the case is one which
25 is or has become removable.” 28 U.S.C. § 1446(b)(3). Service of the SAC was effective April 30,
26 2019.
27

28 ///

VENUE

Pursuant to 28 U.S.C. § 1391(a) and 28 U.S.C. § 1441, venue is proper in the United States District Court for the Eastern District of California insofar as Defendant conducts business within Fresno County, California, which is where Plaintiffs were employed, where the instant action was originally filed, and which is within this Court’s jurisdiction.

NOTICE TO PLAINTIFFS

As required by 28 U.S.C. § 1446(d), Defendant provided written notice of the filing of this Notice of Removal to Plaintiffs. (Defendant’s Notice to Adverse Party of Removal to Federal Court, attached as Exhibit “F.”)

NOTICE TO THE FRESNO COUNTY SUPERIOR COURT

Defendant also filed this Notice of Removal with the Clerk of the Fresno County Superior Court. (Notice to State Court of Removal of Civil Action to Federal Court, attached as Exhibit “G”).

FEDERAL QUESTION JURISDICTION

28 U.S.C. Section 1331 provides as follows: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

This action is a civil action over which this Court has original jurisdiction based upon the existence of a federal question pursuant to 28 U.S.C. § 1331, and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(because it is a civil action that presents a federal question as set forth below).

In this action arising out of Plaintiffs’ employment with Defendant, the Complaint expressly alleges a claim for relief for violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201, 207, and 216 and expressly asks for damages to be awarded under those sections. (See Exhibit “B,” ¶¶ 96-106.) The FLSA is a federal statute which, in part, governs payment of overtime wages. See 29 U.S.C. §§ 207(a) and 216(b). As such, this Court has original jurisdiction under Section 1331 as a cause of action “arising under the Constitution, laws, or treaties of the United States.”

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(No.)

3.

DEFENDANT L’OREAL USA S/D, INC.’S
NOTICE OF REMOVAL

1 Accordingly, this case may be removed to this Court by Defendant pursuant to Section
2 1331 and 28 U.S.C. section 1441(b) because it is a civil action that arises under the laws of the United
3 States.

4 Plaintiffs' other claims for violations of California overtime and other wage-and-hour
5 laws, are related to Plaintiffs' employment with Defendant, are based on the same facts, events,
6 transactions and occurrences as Plaintiffs' FLSA-based claim, and are so related to Plaintiffs' FLSA-
7 based claim as to form part of the same case and controversy. Therefore, the Court has supplemental
8 jurisdiction over these claims pursuant to 28 U.S.C. section 1367(a). Additionally, the Court has
9 jurisdiction of the remaining claims pursuant to 28 U.S.C. section 1441(c).

10
11 Dated: May 27, 2019

LITTLER MENDELSON, P.C.
ANGELA J. RAFOTH

12
13
14 By: 

ANGELA J. RAFOTH
IRENE V. FITZGERALD
Attorneys for Defendant
L'OREAL USA S/D, INC.

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16
17 FIRMWIDE:164562702.1 054993.1110

EXHIBIT “A”

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FRESNO COUNTY SUPERIOR COURT

By: R Garcia, Deputy

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

ANGELA CONTI and JUSTINE MORA,
individuals, on behalf of themselves, and
on behalf of all persons similarly situated,

Plaintiffs,

vs.

L'OREAL USA S/D, INC., a Corporation;
and Does 1 through 50, Inclusive,

Defendants.

Case No. 18CECG00816

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant L’Oreal USA S/D, Inc. (“DEFENDANT”) is a Corporation and at all
8 relevant times mentioned herein conducted and continues to conduct substantial and regular
9 business throughout California.

10 2. DEFENDANT was founded in 1999. DEFENDANT’s line of business includes
11 the retail sale of specialized lines of merchandise.

12 3. Plaintiff Conti was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from June of 2010 to December
14 8, 2017.

15 4. Plaintiff Mora was employed by DEFENDANT in California as a non-exempt
16 employee entitled to overtime pay and meal and rest periods from July of 2015 to November
17 of 2017.

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

23 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
24 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
25 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy
26 and practice which failed to lawfully compensate these employees for all their overtime worked.
27 DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and deceptive
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1 business practice whereby DEFENDANT retained and continues to retain wages due
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
3 other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
4 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
6 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

24
25 **THE CONDUCT**

26 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
27 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all time worked,
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1 meaning the time during which an employee is subject to the control of an employer, including
2 all the time the employee is suffered or permitted to work. DEFENDANT required
3 PLAINTIFFS and CALIFORNIA CLASS Members to work off the clock without paying them
4 for all the time they were under DEFENDANT's control. PLAINTIFFS and CALIFORNIA
5 CLASS Members would clock out of DEFENDANT's timekeeping system, in order to perform
6 additional work for DEFENDANT as required to meet DEFENDANT's job requirements.
7 Specifically, During the CALIFORNIA CLASS PERIOD, DEFENDANT engaged in the
8 uniform and systematic practice of requiring PLAINTIFFS and CALIFORNIA CLASS
9 Members to perform work off the clock after clocking out in that DEFENDANT, as a condition
10 of employment, required these employees to wait for and submit to loss prevention inspections
11 after clocking out for meal breaks and at the end of each scheduled shift for which
12 DEFENDANT did not provide compensation for time spent awaiting and performing the loss
13 prevention inspections off the clock. As a result, PLAINTIFFS and other CALIFORNIA
14 CLASS Members forfeited overtime wages by working without their time being correctly
15 recorded and without compensation at the applicable overtime rates. DEFENDANT's uniform
16 policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all
17 overtime worked, is evidenced by DEFENDANT's business records.

18 10. In violation of the applicable sections of the California Labor Code and the
19 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
20 a matter of company policy, practice and procedure, intentionally and knowingly failed to
21 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct
22 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
23 intended to purposefully avoid the payment of the correct overtime compensation as required
24 by California law which allowed 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.

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

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

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

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

20 15. Specifically as to PLAINTIFFS, they were from time to time unable to take off
21 duty meal and rest breaks and were not fully relieved of duty for their meal and rest periods and
22 were not paid all overtime wages due to them as a result of DEFENDANT’s policy that required
23 them to work off the clock. PLAINTIFFS were required to perform work as ordered by
24 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
25 break. Further, DEFENDANT failed to provide PLAINTIFFS with a second off-duty meal
26 period each workday in which they were required by DEFENDANT to work ten (10) hours of
27 work. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation
28

1 and in accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT
2 also provided PLAINTIFFS with a pay stub that failed to accurately display PLAINTIFFS'
3 correct rates of overtime pay and payments for missed meal and rest periods for certain pay
4 periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid
5 PLAINTIFFS the overtime compensation still owed to them or any penalty wages owed to them
6 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does
7 not exceed the sum or value of \$75,000.

8
9 **JURISDICTION AND VENUE**

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

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

19
20 **THE CALIFORNIA CLASS**

21 18. PLAINTIFFS bring 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
24 all individuals who are or previously were employed by DEFENDANT in California and
25 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
26 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
27 determined by the Court (the "CALIFORNIA CLASS PERIOD").

1 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

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

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

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

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

15 24. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
18 California law by:

19 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
20 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
21 place company policies, practices and procedures that failed to pay all
22 wages due the CALIFORNIA CLASS for all overtime worked, and failed
23 to accurately record the applicable rates of all overtime worked by the
24 CALIFORNIA CLASS;

25 (b) Committing an act of unfair competition in violation of the California
26 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
27 unlawfully, unfairly, and/or deceptively having in place a company policy,
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1 practice and procedure that failed to correctly calculate overtime
2 compensation due to PLAINTIFFS and the members of the
3 CALIFORNIA CLASS; and,

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

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

- 10 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
11 that the joinder of all such persons is impracticable and the disposition of
12 their claims as a class will benefit the parties and the Court;
- 13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
14 that are raised in this Complaint are common to the CALIFORNIA
15 CLASS will apply uniformly to every member of the CALIFORNIA
16 CLASS;
- 17 (c) The claims of the representative PLAINTIFFS are typical of the claims of
18 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
19 other members of the CALIFORNIA CLASS, were subjected to the
20 uniform employment practices of DEFENDANT and were non-exempt
21 employees paid on an hourly basis who were subjected to
22 DEFENDANT's practice and policy which failed to pay the correct rate
23 of overtime wages due to the CALIFORNIA CLASS for all overtime
24 worked by the CALIFORNIA CLASS and thereby systematically
25 underpays overtime compensation to the CALIFORNIA CLASS.
26 PLAINTIFFS sustained economic injury as a result of DEFENDANT's
27 employment practices. PLAINTIFFS and the members of the
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CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

- (a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will 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

1 act on grounds generally applicable to the CALIFORNIA CLASS, making
2 appropriate class-wide relief with respect to the CALIFORNIA CLASS
3 as a whole in that DEFENDANT uniformly failed to pay all wages due.
4 Including the correct overtime rate, for all worked by the members of the
5 CALIFORNIA CLASS as required by law;

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

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

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

27 2) Class certification will obviate the need for unduly duplicative
28

1 litigation that would create the risk of:

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

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

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

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

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

24 (a) The questions of law and fact common to the CALIFORNIA CLASS
25 predominate over any question affecting only individual CALIFORNIA
26 CLASS Members because the DEFENDANT's employment practices are
27 uniform and systematically applied with respect to the CALIFORNIA
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CLASS;

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

1 a efficient and rapid conclusion to all litigation of all wage and hour
2 related claims arising out of the conduct of DEFENDANT as to the
3 members of the CALIFORNIA CLASS.

4 29. DEFENDANT maintains records from which the Court can ascertain and identify
5 by job title each of DEFENDANT's employees who as have been systematically, intentionally
6 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
7 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job
8 titles of similarly situated employees when they have been identified.

9
10 **THE CALIFORNIA LABOR SUB-CLASS**

11 30. PLAINTIFFS further bring the Second, Third, Fourth, Fifth and Sixth causes of
12 Action on behalf of a California sub-class, defined as all individuals who are or previously were
13 employed by DEFENDANT in California and classified as non-exempt employees (the
14 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to
15 the filing of the complaint and ending on the date as determined by the Court (the
16 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.

17 31. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 wilfully, engaged in a practice whereby DEFENDANT failed to provide off duty meal and rest
21 periods to PLAINTIFFS and CALIFORNIA CLASS Members and failed to correctly calculate
22 overtime compensation for the overtime worked by PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
24 work, required employees to perform this work and permitted or suffered to permit this
25 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
26 CLASS Members overtime wages at the correct amount to which these employees are entitled
27 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling

1 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
2 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

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

- 1 (f) Whether DEFENDANT has engaged in unfair competition by the
2 above-listed conduct;
- 3 (g) The proper measure of damages and penalties owed to the members of the
4 CALIFORNIA LABOR SUB-CLASS; and,
- 5 (h) Whether DEFENDANT's conduct was willful.

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

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

- 17 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
18 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
19 CLASS the correct overtime pay for which DEFENDANT is liable
20 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 21 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
22 PLAINTIFFS and the other members of the CALIFORNIA CLASS with
23 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
24 and the legally required rest breaks;
- 25 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
26 the members of the CALIFORNIA LABOR SUB-CLASS with an
27 accurate itemized statement in writing showing all accurate and applicable
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overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee; and,

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

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, were non-exempt employees paid on an hourly basis who were subjected to the DEFENDANT's practice and policy described herein. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive

1 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

- 16 1) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA LABOR SUB-CLASS which
18 would establish incompatible standards of conduct for the parties
19 opposing the CALIFORNIA LABOR SUB-CLASS; or,
20 2) Adjudication with respect to individual members of the
21 CALIFORNIA LABOR SUB-CLASS which would as a practical
22 matter be dispositive of interests of the other members not party to
23 the adjudication or substantially impair or impede their ability to
24 protect their interests.

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

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

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

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

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

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a practical
27 matter be dispositive of the interests of the other members

1 not parties to the adjudication or substantially impair or
2 impede their ability to protect their interests;

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

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

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

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

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

26 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
27 numerous that it is impractical to bring all members of the CALIFORNIA
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LABOR SUB-CLASS before the Court;

- (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

10 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver, as
17 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.

18 Cal. Bus. & Prof. Code § 17203.

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

26 44. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
27 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
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1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
6 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFFS, and
7 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
8 accurately to record the applicable rate of all overtime worked, and failed to provide the legally
9 required off duty meal and rest periods due to a systematic business practice that cannot be
10 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
11 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
12 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
13 restitution of wages wrongfully withheld.

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

18 47. By the conduct alleged herein, DEFENDANT's practices were also unfair and
19 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
20 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

26 49. PLAINTIFFS further demand on behalf of themselves and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period

1 was not timely provided as required by law.

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

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

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

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

22 54. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
23 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
24 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
25 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
26 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
27 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to

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1 engage in these unlawful and unfair business practices.

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3 **SECOND CAUSE OF ACTION**

4 **For Failure To Pay Overtime Compensation**

5 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

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

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

11 56. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
12 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
13 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
14 to accurately calculate the applicable rates for all overtime worked by PLAINTIFFS and other
15 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
16 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
17 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
18 any workweek.

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

21 58. Cal. Lab. Code § 510 further provides that employees in California shall not be
22 employed more than eight (8) hours per workday and/or more than forty (40) hours per
23 workweek unless they receive additional compensation beyond their regular wages in amounts
24 specified by law.

25 59. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
26 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
27 Code § 1198 further states that the employment of an employee for longer hours than those

1 fixed by the Industrial Welfare Commission is unlawful.

2 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
3 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
4 amount of overtime worked. As set forth herein, DEFENDANT's uniform policy and practice
5 was to unlawfully and intentionally deny timely payment of wages due for the overtime worked
6 by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
7 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
8 all overtime worked.

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

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

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

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

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

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

8 66. DEFENDANT failed to accurately pay PLAINTIFFS and the other members of
9 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
10 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
11 & 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 using the applicable overtime rate as evidenced by
14 DEFENDANT's business records and witnessed by employees.

15 67. 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 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 68. DEFENDANT knew or should have known that PLAINTIFFS and the other
22 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their 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 the
27 applicable overtime rate.

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

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

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THIRD CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

71. 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.

72. During the CALIFORNIA CLASS PERIOD, DEFENDANT 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 often 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. 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 strict corporate policy and practice.

73. DEFENDANT further violated 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 each workday that a meal period was not provided.

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

3 78. 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
8 **FIFTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 226]**

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

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

16 80. Cal. Labor Code § 226 provides that an employer must furnish employees with
17 an "accurate itemized" statement in writing showing:

18 (1) gross wages earned,

19 (2) total hours worked by the employee, except for any employee whose compensation
20 is solely based on a salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
22 Commission,

23 (3) the number of piecerate units earned and any applicable piece rate if the employee
24 is paid on a piece-rate basis,

25 (4) all deductions, provided that all deductions made on written orders of the employee
26 may be aggregated and shown as one item,

27 (5) net wages earned,

28

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

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

23 82. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
24 Code § 226, causing injury and damages to the PLAINTIFFS and the other members of the
25 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
26 expended calculating the correct rates for the overtime worked and the amount of employment
27 taxes which were not properly paid to state and federal tax authorities. These damages are
28

1 difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA
2 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
3 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
4 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
5 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
6 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS
7 herein).

8
9 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

18 As used in this article:

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

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

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

25 86. Cal. Lab. Code § 202 provides, in relevant part, that:

26 If an employee not having a written contract for a definite period quits his or her
27 employment, his or her wages shall become due and payable not later than 72
28 hours thereafter, unless the employee has given 72 hours previous notice of his
or her intention to quit, in which case the employee is entitled to his or her wages

1 at the time of quitting. Notwithstanding any other provision of law, an employee
2 who quits without providing a 72-hour notice shall be entitled to receive payment
3 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.

4 87. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
5 SUB-CLASS Members' employment contract.

6 88. Cal. Lab. Code § 203 provides:

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

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

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

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
22 severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

- 24 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
26 B) An order temporarily, preliminarily and permanently enjoining and restraining
27 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
28 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS; and,

3 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
4 for restitution of the sums incidental to DEFENDANT's violations due to
5 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

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

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

15 C) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
16 the applicable IWC Wage Order;

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

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

25 3. On all claims:

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

27 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 §218.5, §226, and/or §1194.

Dated: March 6, 2018

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: March 6, 2018

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiffs

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FRESNO COUNTY SUPERIOR COURT

By: K. Mendoza, Deputy

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

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

9
10 ANGELA CONTI and JUSTINE MORA,
11 individuals, on behalf of themselves, and
on behalf of all persons similarly situated,

12 Plaintiffs,

13 vs.

14 L'OREAL USA S/D, INC., a Corporation;
15 and Does 1 through 50, Inclusive,

16 Defendants.

Case No. **18CECG00816**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant L’Oreal USA S/D, Inc. (“DEFENDANT”) is a Corporation and at all
8 relevant times mentioned herein conducted and continues to conduct substantial and regular
9 business throughout California.

10 2. DEFENDANT was founded in 1999. DEFENDANT’s line of business includes
11 the retail sale of specialized lines of merchandise.

12 3. Plaintiff Conti was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from June of 2010 to December
14 8, 2017.

15 4. Plaintiff Mora was employed by DEFENDANT in California as a non-exempt
16 employee entitled to overtime pay and meal and rest periods from July of 2015 to November
17 of 2017.

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

23 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
24 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
25 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy
26 and practice which failed to lawfully compensate these employees for all their overtime worked.
27 DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and deceptive
28

1 business practice whereby DEFENDANT retained and continues to retain wages due
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
3 other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
4 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
6 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

24
25 **THE CONDUCT**

26 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
27 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all time worked,
28

1 meaning the time during which an employee is subject to the control of an employer, including
2 all the time the employee is suffered or permitted to work. DEFENDANT required
3 PLAINTIFFS and CALIFORNIA CLASS Members to work off the clock without paying them
4 for all the time they were under DEFENDANT's control. PLAINTIFFS and CALIFORNIA
5 CLASS Members would clock out of DEFENDANT's timekeeping system, in order to perform
6 additional work for DEFENDANT as required to meet DEFENDANT's job requirements.
7 Specifically, During the CALIFORNIA CLASS PERIOD, DEFENDANT engaged in the
8 uniform and systematic practice of requiring PLAINTIFFS and CALIFORNIA CLASS
9 Members to perform work off the clock after clocking out in that DEFENDANT, as a condition
10 of employment, required these employees to wait for and submit to loss prevention inspections
11 after clocking out for meal breaks and at the end of each scheduled shift for which
12 DEFENDANT did not provide compensation for time spent awaiting and performing the loss
13 prevention inspections off the clock. As a result, PLAINTIFFS and other CALIFORNIA
14 CLASS Members forfeited overtime wages by working without their time being correctly
15 recorded and without compensation at the applicable overtime rates. DEFENDANT's uniform
16 policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all
17 overtime worked, is evidenced by DEFENDANT's business records.

18 10. In violation of the applicable sections of the California Labor Code and the
19 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
20 a matter of company policy, practice and procedure, intentionally and knowingly failed to
21 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct
22 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
23 intended to purposefully avoid the payment of the correct overtime compensation as required
24 by California law which allowed 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

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

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

22 13. When PLAINTIFFS and other CALIFORNIA CLASS Members worked off the
23 clock overtime and/or missed meal and rest breaks, DEFENDANT also failed to provide
24 PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and
25 accurate wage statements which failed to show, among other things, the correct overtime rate
26 for overtime worked, including, work performed in excess of eight (8) hours in a workday
27 and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and
28

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

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

20 15. Specifically as to PLAINTIFFS, they were from time to time unable to take off
21 duty meal and rest breaks and were not fully relieved of duty for their meal and rest periods and
22 were not paid all overtime wages due to them as a result of DEFENDANT’s policy that required
23 them to work off the clock. PLAINTIFFS were required to perform work as ordered by
24 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
25 break. Further, DEFENDANT failed to provide PLAINTIFFS with a second off-duty meal
26 period each workday in which they were required by DEFENDANT to work ten (10) hours of
27 work. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation
28

1 and in accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT
2 also provided PLAINTIFFS with a pay stub that failed to accurately display PLAINTIFFS'
3 correct rates of overtime pay and payments for missed meal and rest periods for certain pay
4 periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid
5 PLAINTIFFS the overtime compensation still owed to them or any penalty wages owed to them
6 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does
7 not exceed the sum or value of \$75,000.

8
9 **JURISDICTION AND VENUE**

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

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

19
20 **THE CALIFORNIA CLASS**

21 18. PLAINTIFFS bring 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
24 all individuals who are or previously were employed by DEFENDANT in California and
25 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
26 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
27 determined by the Court (the "CALIFORNIA CLASS PERIOD").

1 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

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

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

25 22. DEFENDANT has the legal burden to establish that each and every
26 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked.
27 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
28

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

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

15 24. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
18 California law by:

19 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
20 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
21 place company policies, practices and procedures that failed to pay all
22 wages due the CALIFORNIA CLASS for all overtime worked, and failed
23 to accurately record the applicable rates of all overtime worked by the
24 CALIFORNIA CLASS;

25 (b) Committing an act of unfair competition in violation of the California
26 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
27 unlawfully, unfairly, and/or deceptively having in place a company policy,
28

1 practice and procedure that failed to correctly calculate overtime
2 compensation due to PLAINTIFFS and the members of the
3 CALIFORNIA CLASS; and,

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

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

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

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

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

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

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

- 18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA CLASS which would establish
20 incompatible standards of conduct for the parties opposing the
21 CALIFORNIA CLASS; and/or,
22 2) Adjudication with respect to individual members of the
23 CALIFORNIA CLASS which would as a practical matter be
24 dispositive of interests of the other members not party to the
25 adjudication or substantially impair or impede their ability to
26 protect their interests.

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

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

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

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

27 2) Class certification will obviate the need for unduly duplicative
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1 litigation that would create the risk of:

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

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

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

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

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

24 (a) The questions of law and fact common to the CALIFORNIA CLASS
25 predominate over any question affecting only individual CALIFORNIA
26 CLASS Members because the DEFENDANT's employment practices are
27 uniform and systematically applied with respect to the CALIFORNIA
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CLASS;

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

1 a efficient and rapid conclusion to all litigation of all wage and hour
2 related claims arising out of the conduct of DEFENDANT as to the
3 members of the CALIFORNIA CLASS.

4 29. DEFENDANT maintains records from which the Court can ascertain and identify
5 by job title each of DEFENDANT's employees who as have been systematically, intentionally
6 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
7 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job
8 titles of similarly situated employees when they have been identified.

9
10 **THE CALIFORNIA LABOR SUB-CLASS**

11 30. PLAINTIFFS further bring the Second, Third, Fourth, Fifth and Sixth causes of
12 Action on behalf of a California sub-class, defined as all individuals who are or previously were
13 employed by DEFENDANT in California and classified as non-exempt employees (the
14 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to
15 the filing of the complaint and ending on the date as determined by the Court (the
16 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.

17 31. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 wilfully, engaged in a practice whereby DEFENDANT failed to provide off duty meal and rest
21 periods to PLAINTIFFS and CALIFORNIA CLASS Members and failed to correctly calculate
22 overtime compensation for the overtime worked by PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
24 work, required employees to perform this work and permitted or suffered to permit this
25 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
26 CLASS Members overtime wages at the correct amount to which these employees are entitled
27 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling

1 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
2 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

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

- 1 (f) Whether DEFENDANT has engaged in unfair competition by the
- 2 above-listed conduct;
- 3 (g) The proper measure of damages and penalties owed to the members of the
- 4 CALIFORNIA LABOR SUB-CLASS; and,
- 5 (h) Whether DEFENDANT's conduct was willful.

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

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

- 17 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 18 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
- 19 CLASS the correct overtime pay for which DEFENDANT is liable
- 20 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 21 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
- 22 PLAINTIFFS and the other members of the CALIFORNIA CLASS with
- 23 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
- 24 and the legally required rest breaks;
- 25 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
- 26 the members of the CALIFORNIA LABOR SUB-CLASS with an
- 27 accurate itemized statement in writing showing all accurate and applicable
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1 overtime rates in effect during the pay period and the corresponding
2 amount of time worked at each overtime rate by the employee; and,

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

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

- 11 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
12 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
13 Members is impracticable and the disposition of their claims as a class
14 will benefit the parties and the Court;
- 15 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
16 that are raised in this Complaint are common to the CALIFORNIA
17 LABOR SUB-CLASS and will apply uniformly to every member of the
18 CALIFORNIA LABOR SUB-CLASS;
- 19 (c) The claims of the representative PLAINTIFFS are typical of the claims of
20 each member of the CALIFORNIA LABOR SUB-CLASS.
21 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
22 SUB-CLASS, were non-exempt employees paid on an hourly basis who
23 were subjected to the DEFENDANT's practice and policy described
24 herein. PLAINTIFFS sustained economic injury as a result of
25 DEFENDANT's employment practices. PLAINTIFFS and the members
26 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
27 identically harmed by the same unlawful, deceptive, unfair and pervasive

1 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

- 16 1) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA LABOR SUB-CLASS which
18 would establish incompatible standards of conduct for the parties
19 opposing the CALIFORNIA LABOR SUB-CLASS; or,
20 2) Adjudication with respect to individual members of the
21 CALIFORNIA LABOR SUB-CLASS which would as a practical
22 matter be dispositive of interests of the other members not party to
23 the adjudication or substantially impair or impede their ability to
24 protect their interests.

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

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

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

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

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

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a practical
27 matter be dispositive of the interests of the other members

1 not parties to the adjudication or substantially impair or
2 impede their ability to protect their interests;

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

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

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

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

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

26 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
27 numerous that it is impractical to bring all members of the CALIFORNIA
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LABOR SUB-CLASS before the Court;

- (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

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

44. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive,

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
6 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFFS, and
7 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
8 accurately to record the applicable rate of all overtime worked, and failed to provide the legally
9 required off duty meal and rest periods due to a systematic business practice that cannot be
10 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
11 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
12 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
13 restitution of wages wrongfully withheld.

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

18 47. By the conduct alleged herein, DEFENDANT's practices were also unfair and
19 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
20 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

26 49. PLAINTIFFS further demand on behalf of themselves and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
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1 was not timely provided as required by law.

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

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

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

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

22 54. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
23 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
24 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
25 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
26 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
27 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to

1 engage in these unlawful and unfair business practices.

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3 **SECOND CAUSE OF ACTION**

4 **For Failure To Pay Overtime Compensation**

5 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

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

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

11 56. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
12 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
13 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
14 to accurately calculate the applicable rates for all overtime worked by PLAINTIFFS and other
15 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
16 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
17 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
18 any workweek.

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

21 58. Cal. Lab. Code § 510 further provides that employees in California shall not be
22 employed more than eight (8) hours per workday and/or more than forty (40) hours per
23 workweek unless they receive additional compensation beyond their regular wages in amounts
24 specified by law.

25 59. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
26 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
27 Code § 1198 further states that the employment of an employee for longer hours than those

1 fixed by the Industrial Welfare Commission is unlawful.

2 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
3 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
4 amount of overtime worked. As set forth herein, DEFENDANT's uniform policy and practice
5 was to unlawfully and intentionally deny timely payment of wages due for the overtime worked
6 by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
7 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
8 all overtime worked.

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

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

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

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

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

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

8 66. DEFENDANT failed to accurately pay PLAINTIFFS and the other members of
9 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
10 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
11 & 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 using the applicable overtime rate as evidenced by
14 DEFENDANT's business records and witnessed by employees.

15 67. 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 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 68. DEFENDANT knew or should have known that PLAINTIFFS and the other
22 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their 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 the
27 applicable overtime rate.

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

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

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THIRD CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

71. 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.

72. During the CALIFORNIA CLASS PERIOD, DEFENDANT 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 often 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. 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 strict corporate policy and practice.

73. DEFENDANT further violated 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 each workday that a meal period was not provided.

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

5
6 **FOURTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

3 78. 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
8 **FIFTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 226]**

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

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

16 80. Cal. Labor Code § 226 provides that an employer must furnish employees with
17 an "accurate itemized" statement in writing showing:

- 18 (1) gross wages earned,
19 (2) total hours worked by the employee, except for any employee whose compensation
20 is solely based on a salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
22 Commission,
23 (3) the number of piece-rate units earned and any applicable piece rate if the employee
24 is paid on a piece-rate basis,
25 (4) all deductions, provided that all deductions made on written orders of the employee
26 may be aggregated and shown as one item,
27 (5) net wages earned,

28

1 (6) the inclusive dates of the period for which the employee is paid,

2 (7) the name of the employee and his or her social security number, except that by
3 January 1, 2008, only the last four digits of his or her social security number or an
4 employee identification number other than a social security number may be shown on
5 the itemized statement,

6 (8) the name and address of the legal entity that is the employer, and

7 (9) all applicable hourly rates in effect during the pay period and the corresponding
8 number of hours worked at each hourly rate by the employee.

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

23 82. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
24 Code § 226, causing injury and damages to the PLAINTIFFS and the other members of the
25 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
26 expended calculating the correct rates for the overtime worked and the amount of employment
27 taxes which were not properly paid to state and federal tax authorities. These damages are

1 difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA
2 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
3 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
4 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
5 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
6 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS
7 herein).

8
9 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

18 As used in this article:

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

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

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

27 86. Cal. Lab. Code § 202 provides, in relevant part, that:

28 If an employee not having a written contract for a definite period quits his or her
employment, his or her wages shall become due and payable not later than 72
hours thereafter, unless the employee has given 72 hours previous notice of his
or her intention to quit, in which case the employee is entitled to his or her wages

1 at the time of quitting. Notwithstanding any other provision of law, an employee
2 who quits without providing a 72-hour notice shall be entitled to receive payment
3 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.

4 87. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
5 SUB-CLASS Members' employment contract.

6 88. Cal. Lab. Code § 203 provides:

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

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

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

19 **SEVENTH CAUSE OF ACTION**

20 **For Violation of the Private Attorneys General Act**

21 **[Cal. Lab. Code §§ 2698, *et seq.*]**

22 **(By Plaintiffs and Against All Defendants)**

23 91. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-90,
24 *supra*, as though fully set forth at this point.

25 92. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
27 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is

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

8 93. Plaintiffs, and such persons that may be added from time to time who satisfy the
9 requirements and exhaust the administrative procedures under the Private Attorney General Act,
10 bring this Representative Action on behalf of the State of California with respect to themselves
11 and all individuals who are or previously were employed by DEFENDANT as non-exempt
12 employees in California during the time period of March 6, 2017 until the present (the
13 "AGGRIEVED EMPLOYEES").

14 94. On January 29, 2018, Plaintiffs gave written notice by electronic mail to the Labor
15 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
16 the specific provisions of this code alleged to have been violated as required by Labor Code §
17 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein. The
18 statutory waiting period for PLAINTIFFS to add these allegations to the Complaint has expired.
19 As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative
20 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with
21 respect to all AGGRIEVED EMPLOYEES as herein defined.

22 95. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because Defendant (a) failed to provide PLAINTIFFS and the other
24 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime, (b) failed
25 to properly record and provide legally required meal and rest periods, (c) failed to provide
26 accurate itemized wage statements, and (d) failed to pay wages when due, all in violation of the
27 applicable Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204, 226(a),
28

1 226.7, 510, 512, 558, 1194, 1198, and the applicable Industrial Wage Order(s), and thereby
2 gives rise to statutory penalties as a result of such conduct. PLAINTIFFS hereby seek recovery
3 of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
4 representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS
5 and the other AGGRIEVED EMPLOYEES.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

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

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

- 22 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of
23 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
24 pursuant to Cal. Code of Civ. Proc. § 382;
25 B) Compensatory damages, according to proof at trial, including compensatory
26 damages for overtime compensation due PLAINTIFFS and the other members
27 of the CALIFORNIA LABOR SUB-CLASS, during the applicable
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CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

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

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

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

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

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

4. On all claims:

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

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

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

Dated: April 9, 2018

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: 
Aparajit Bhowmik
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 9, 2018

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: 

Aparajit Bhowmik
Attorneys for Plaintiffs

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

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WRITERS EXT:
1004

January 29, 2018
CA1514

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

L'Oreal USA S/D, Inc.
Certified Mail # 70171450000202536847
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Angela Conti and Justine Mora ("Plaintiffs"), and other aggrieved employees in a lawsuit against L'Oreal USA S/D, Inc. ("Defendant"). Plaintiff Conti was employed by Defendant in California from June of 2010 to December of 2017 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control, including overtime worked. Plaintiff Mora was employed by Defendant in California from July of 2015 to November of 2017 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control, including overtime worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, including overtime wages, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, 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. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, 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 filed 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 incorporate 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 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Restations Accounting unit with an identification of the Plaintiffs, the Defendant and the notice. The pending 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 California 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 ANGELA J. RAFOTH, Bar No. 241966
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7 Email: Ifitzgerald@littler.com

FRESNO COUNTY SUPERIOR COURT
By: A. Ramos, Deputy

8 Attorneys for Defendant, L'OREAL USA S/D, INC.
9

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF FRESNO

12 ANGELA CONTI and JUSTINE MORA,
13 individuals, on behalf of themselves, and
on behalf of all persons similarly situated,

Case No. 18CECG00816

**DEFENDANT L'OREAL USA S/D, INC.'S
ANSWER TO FIRST AMENDED CLASS
ACTION COMPLAINT**

14 Plaintiffs,

ASSIGNED FOR ALL PURPOSES TO JUDGE
JEFFREY HAMILTON

15 v.

First Amended Complaint filed: April 9, 2018
Trial Date: TBD

16 L'OREAL USA S/D, INC., a Corporation;
17 and DOES 1 through 50, inclusive,

18 Defendant.

19 Defendant L'OREAL USA S/D, INC. ("L'OREAL") hereby answers the unverified
20 First Amended Class Action Complaint ("FAC") filed by Plaintiffs ANGELA CONTI and JUSTINE
21 MORA ("Plaintiffs") on behalf of themselves and all others similarly situated in the above-
22 referenced action.

23 **GENERAL DENIAL**

24 Pursuant to the provisions of the California Code of Civil Procedure section
25 431.30(d), L'OREAL denies generally and specifically each and every allegation contained in the
26 FAC. In addition, L'OREAL denies Plaintiffs have sustained, or will sustain, any loss or damages in
27 the manner or amount alleged, or otherwise, by reason of any act or omission, or any other conduct
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1 or absence thereof on the part of L'OREAL. L'OREAL further denies that any of the claims asserted
2 by Plaintiffs is suitable for class, collective, or representative treatment or adjudication.

3 **AFFIRMATIVE AND OTHER DEFENSES**

4 L'OREAL asserts the following affirmative and other defenses, which it designates,
5 collectively, as "affirmative defenses." L'OREAL's designation of its defenses as "affirmative" is
6 not intended in any way to alter Plaintiffs' burden of proof with regard to any element of their causes
7 of action. L'OREAL also expressly denies the existence of any alleged putative class of persons or
8 "aggrieved employees" that Plaintiffs purport to represent in this lawsuit. L'OREAL incorporates
9 (as if fully set forth therein) this express denial each and every time it references "Plaintiffs."

10 **FIRST AFFIRMATIVE DEFENSE**

11 (General Denial)

12 L'OREAL alleges that Plaintiffs' FAC, and every alleged cause of action therein, fails
13 to state a claim sufficient to constitute a cause of action.

14 **SECOND AFFIRMATIVE DEFENSE**

15 (Statute of Limitations)

16 L'OREAL alleges that Plaintiffs' FAC, and every cause of action therein, is barred by
17 the applicable statutes of limitations set forth in Code of Civil Procedure sections 338 and 340(a),
18 Labor Code section 203, Business and Professions Code section 17208, and/or any other applicable
19 statute of limitations.

20 **THIRD AFFIRMATIVE DEFENSE**

21 (PAGA – No Standing)

22 L'OREAL alleges that Plaintiffs lack standing to bring claims for any civil penalties
23 on behalf of others because they are not an "aggrieved employee" pursuant to the Labor Code
24 Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 et seq.

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FOURTH AFFIRMATIVE DEFENSE
(PAGA – Failure To Exhaust)

L'OREAL alleges that Plaintiffs failed to exhaust all internal grievance procedures and administrative remedies and failed to timely provide the Labor Workforce Development Agency (“LWDA”) and Defendant with proper notification of the claims and/or to adequately describe their claims or the “aggrieved employees” on whose behalf they intend to seek penalties, pursuant to the PAGA.

FIFTH AFFIRMATIVE DEFENSE
(PAGA – Failure To Identify)

L'OREAL alleges that Plaintiffs have failed to adequately identify any other allegedly “aggrieved employees,” as required by the PAGA.

SIXTH AFFIRMATIVE DEFENSE
(PAGA – Determination Of Penalties)

L'OREAL alleges that civil penalties that Plaintiffs seek pursuant to the PAGA cannot be determined on a class-wide or representative basis.

SEVENTH AFFIRMATIVE DEFENSE
(PAGA – Determination Of Penalties)

L'OREAL alleges that any penalties awarded against it pursuant to the PAGA would be unjust, arbitrary, oppressive or confiscatory.

EIGHTH AFFIRMATIVE DEFENSE
(PAGA – No Statutory Penalties)

L'OREAL alleges that Plaintiffs cannot recover statutory penalties on behalf of other “aggrieved employees” pursuant to the PAGA.

NINTH AFFIRMATIVE DEFENSE
(PAGA – Constitutionality)

L'OREAL alleges that the imposition of civil penalties pursuant to the PAGA is unconstitutional under the California and United States constitutions.

///

1 objections, then L'OREAL asserts the additional defenses set forth herein against each and every
2 member of the certified class.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**
4 (Equitable Defenses)

5 L'OREAL alleges that Plaintiffs' FAC, and every alleged cause of action therein, is
6 barred in whole or in part to the extent it is subject to the equitable doctrines, of laches, unclean
7 hands, waiver, and estoppel.

8 **FIFTEENTH AFFIRMATIVE DEFENSE**
9 (Claims Subject To Arbitration)

10 L'OREAL alleges that the Court lacks jurisdiction over the claims alleged in
11 Plaintiffs' FAC to the extent that Plaintiffs, and/or some or all of those they purport to represent, are
12 subject to a valid and enforceable arbitration agreement requiring the arbitration of those
13 individual's claims.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**
15 (No Class Arbitration Claims)

16 L'OREAL alleges that the class and representative allegations of the FAC are barred
17 because Plaintiffs, and/or some or all of those they purport to represent, and L'OREAL agreed to
18 submit only individual disputes to arbitration.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**
20 (Satisfaction of Obligations)

21 L'OREAL alleges that Plaintiffs' FAC, and every alleged cause of action therein, is
22 barred because, to the extent L'OREAL owed any duties or obligations to Plaintiffs, such duties or
23 obligations have been fully performed, satisfied or discharged.

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**
25 (Injury Caused by Plaintiff)

26 L'OREAL alleges that Plaintiffs' FAC, and every alleged cause of action therein,
27 cannot be maintained against L'OREAL because any alleged losses or harms sustained by Plaintiffs
28 resulted from causes other than any act or omission of any L'OREAL.

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NINETEENTH AFFIRMATIVE DEFENSE
(No Equitable Relief)

L'OREAL alleges that Plaintiffs' FAC, and each and every cause of action alleged therein, is barred to the extent Plaintiffs seek equitable relief because there is an adequate remedy at law.

TWENTIETH AFFIRMATIVE DEFENSE
(Voluntary Waiver)

Defendant alleges that, to the extent that Plaintiffs, and/or some or all of the employees Plaintiffs purport to represent, did not take a meal period or rest break, it was because he/she: (1) failed to take breaks that were provided to him/her in compliance with California law; (2) chose not to take breaks that were authorized and permitted; or (3) waived his/her right to meal periods and/or rest breaks.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Bona Fide Dispute)

Defendant alleges that the Complaint fails to state a claim for penalties under the California Labor Code in that (1) there was a bona fide, good faith dispute as to Defendant's obligations under any applicable Labor Code provisions, including, without limitation, Labor Code section 203, and (2) Defendant did not willfully violate Labor Code section 203.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Offset To Injury)

L'OREAL alleges that any recovery by Plaintiffs under any of the causes of action alleged in the FAC must be offset by any benefits and/or other monies they, and those they seek to represent, have received from L'OREAL.

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ADDITIONAL AFFIRMATIVE AND OTHER DEFENSES


L'OREAL presently has insufficient knowledge or information upon which to form a belief as to whether there may be additional, as yet unstated, defenses and reserves the right to assert additional defenses or affirmative defenses in the event discovery indicates such defenses are appropriate.

PRAYER FOR RELIEF

WHEREFORE, L'OREAL prays for relief as follows:

1. That Plaintiffs take nothing and that the FAC be dismissed in its entirety with prejudice;
2. That judgment be entered in L'OREAL's favor;
3. That L'OREAL be awarded such other and further relief as the Court deems just and proper.

Dated: May 14, 2018.



ANGELA J. RAFOTH
IRENE V. FITZGERALD
LITTLER MENDELSON, P.C.
Attorneys for Defendant

Firmwide: 154390893.2 054993.1110

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 5200 North Palm Avenue, Suite 302, Fresno, California 93704.2225. On May 14, 2018, I served the within document(s):

DEFENDANT L'OREAL USA S/D, INC.'S ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT

By personal service. I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses below and *(specify one)*:

deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at: **Fresno, California.**

By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

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- By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

- By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed below.

Norman B. Blumenthal, Esq. Counsel for Plaintiffs
Kyle R. Nordrehaug, Esq.
Aparajit Bhowmik, Esq.
2255 Calle Clara
La Jolla, CA 92037
Tel: 858.551-1223
Fax: 858.551.1232
Email: norm@bamlawca.com
Email: kyle@bamlawca.com
Email: aj@bamlawlj.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 14, 2018, at Fresno, California.



Jennifer A. Drudge

Firmwide: 154672767.1 054993.1110

EXHIBIT “B”

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Facsimile: (858) 551-1232

Attorneys for Plaintiffs

FILED

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FRESNO COUNTY SUPERIOR COURT

By _____ DEPT. 501

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FRESNO COUNTY SUPERIOR COURT

By: C. York, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

ANGELA CONTI and JUSTINE MORA,
individuals, on behalf of themselves, and
on behalf of all persons similarly situated,

Plaintiffs,

vs.

L'OREAL USA S/D, INC., a Corporation;
and Does 1 through 50, Inclusive,

Defendants.

Case No. 18CECG00816

**STIPULATION AND [PROPOSED] ORDER
FOR LEAVE FOR PLAINTIFFS TO FILE A
SECOND AMENDED CLASS ACTION
COMPLAINT**

Judge: Hon. Jeffrey Hamilton
Dept. 402
Trial Date: TBD
Date Action Filed: March 6, 2018

STIPULATION FOR LEAVE FOR PLAINTIFFS TO FILE
SECOND AMENDED CLASS ACTION COMPLAINT

Case No. 18CECG00816

1 Plaintiffs ANGELA CONTI and JUSTINE MORA ("Plaintiffs) and Defendant L'OREAL
2 USA S/D, INC. ("Defendant"), by and through their respective counsel, hereby stipulate as follows:

3 WHEREAS, Plaintiffs seek to file a Second Amended Class Action Complaint, a
4 copy of which is attached hereto as Exhibit #1;

5 WHEREAS Defendant will stipulate to allow Plaintiffs to file the proposed Second Amended
6 Class Action Complaint attached hereto as Exhibit #1;

7 NOW, THEREFORE, the parties hereby stipulate and agree as follows:

8 Upon the Court's execution of this Order, Plaintiffs may have leave to file the Second
9 Amended Class Action Complaint, a copy of which is attached as Exhibit #1, and Defendant shall
10 have thirty (30) days to respond after service of the Second Amended Class Action Complaint.

11 **IT IS SO STIPULATED.**

12
13 Dated: April 4, 2019

14 _____
Angela J. Rafoth
Irene V. Fitzgerald

LITTLER MENDELSON P.C.
Attorneys for Defendant L'OREAL USA S/D,
INC.

15
16
17
18 Dated: April 4, 2019

Ricardo R. Ehmann

Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Ricardo R. Ehmann

BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP
Attorneys for Plaintiffs ANGELA CONTI and
JUSTINE MORA

19
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22 **IT IS SO ORDERED.**

23
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25 DATED: 4/12/19

Jeffrey Hamilton

The Honorable Jeffrey Hamilton
Judge of the Superior Court of California
County of Fresno

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EXHIBIT 1

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BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

ANGELA CONTI and JUSTINE MORA,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

L'OREAL USA S/D, INC., a Corporation;
and Does 1 through 50, Inclusive,

Defendants.

Case No. 18CECG00816

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
7. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]; and,
8. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF 29 U.S.C. §§ 201, *et seq.*

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant L’Oreal USA S/D, Inc. (“DEFENDANT”) is a Corporation and at all
8 relevant times mentioned herein conducted and continues to conduct substantial and regular
9 business throughout California.

10 2. DEFENDANT was founded in 1999. DEFENDANT’s line of business includes
11 the retail sale of specialized lines of merchandise.

12 3. Plaintiff Conti was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from June of 2010 to December
14 8, 2017.

15 4. Plaintiff Mora was employed by DEFENDANT in California as a non-exempt
16 employee entitled to overtime pay and meal and rest periods from July of 2015 to November
17 of 2017.

18 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
19 class, defined as all individuals who are or previously were employed by Defendant L’Oreal
20 USA S/D, Inc. who worked in California, were classified as non-exempt, and who separated
21 from their employment between March 6, 2014 and February 20, 2018 (the “CALIFORNIA
22 CLASS PERIOD”).

23 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
24 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
25 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy
26 and practice which failed to lawfully compensate these employees for all their overtime worked.
27 DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and deceptive
28

1 business practice whereby DEFENDANT retained and continues to retain wages due
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
3 other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
4 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
6 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

24
25 **THE CONDUCT**

26 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
27 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all time worked,
28

1 meaning the time during which an employee is subject to the control of an employer, including
2 all the time the employee is suffered or permitted to work. DEFENDANT required
3 PLAINTIFFS and CALIFORNIA CLASS Members to work off the clock without paying them
4 for all the time they were under DEFENDANT's control. PLAINTIFFS and CALIFORNIA
5 CLASS Members would clock out of DEFENDANT's timekeeping system, in order to perform
6 additional work for DEFENDANT as required to meet DEFENDANT's job requirements.
7 Specifically, During the CALIFORNIA CLASS PERIOD, DEFENDANT engaged in the
8 uniform and systematic practice of requiring PLAINTIFFS and CALIFORNIA CLASS
9 Members to perform work off the clock after clocking out in that DEFENDANT, as a condition
10 of employment, required these employees to wait for and submit to loss prevention inspections
11 after clocking out for meal breaks and at the end of each scheduled shift for which
12 DEFENDANT did not provide compensation for time spent awaiting and performing the loss
13 prevention inspections off the clock. As a result, PLAINTIFFS and other CALIFORNIA
14 CLASS Members forfeited overtime wages by working without their time being correctly
15 recorded and without compensation at the applicable overtime rates. DEFENDANT's uniform
16 policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all
17 overtime worked, is evidenced by DEFENDANT's business records.

18 10. In violation of the applicable sections of the California Labor Code and the
19 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
20 a matter of company policy, practice and procedure, intentionally and knowingly failed to
21 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct
22 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
23 intended to purposefully avoid the payment of the correct overtime compensation as required
24 by California law which allowed 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

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

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

22 13. When PLAINTIFFS and other CALIFORNIA CLASS Members worked off the
23 clock overtime and/or missed meal and rest breaks, DEFENDANT also failed to provide
24 PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and
25 accurate wage statements which failed to show, among other things, the correct overtime rate
26 for overtime worked, including, work performed in excess of eight (8) hours in a workday
27 and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and
28

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

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

20 15. Specifically as to PLAINTIFFS, they were from time to time unable to take off
21 duty meal and rest breaks and were not fully relieved of duty for their meal and rest periods and
22 were not paid all overtime wages due to them as a result of DEFENDANT's policy that required
23 them to work off the clock. PLAINTIFFS were required to perform work as ordered by
24 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
25 break. Further, DEFENDANT failed to provide PLAINTIFFS with a second off-duty meal
26 period each workday in which they were required by DEFENDANT to work ten (10) hours of
27 work. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation
28

1 and in accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT
2 also provided PLAINTIFFS with a pay stub that failed to accurately display PLAINTIFFS'
3 correct rates of overtime pay and payments for missed meal and rest periods for certain pay
4 periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid
5 PLAINTIFFS the overtime compensation still owed to them or any penalty wages owed to them
6 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does
7 not exceed the sum or value of \$75,000.

8
9 **JURISDICTION AND VENUE**

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

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

19
20 **THE CALIFORNIA CLASS**

21 18. PLAINTIFFS bring 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
24 all individuals who are or previously were employed by Defendant L'Oreal USA S/D, Inc. who
25 worked in California, were classified as non-exempt, and who separated from their employment
26 between March 6, 2014 and February 20, 2018 (the "CALIFORNIA CLASS PERIOD").

27 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
28

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

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

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

24 22. DEFENDANT has the legal burden to establish that each and every
25 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked.
26 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
27 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
28 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable

1 overtime rate for all overtime worked, so as to satisfy their burden. This common business
2 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on
3 a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code
4 §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this
5 claim.

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

13 24. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

17 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
18 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
19 place company policies, practices and procedures that failed to pay all
20 wages due the CALIFORNIA CLASS for all overtime worked, and failed
21 to accurately record the applicable rates of all overtime worked by the
22 CALIFORNIA CLASS;

23 (b) Committing an act of unfair competition in violation of the California
24 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
25 unlawfully, unfairly, and/or deceptively having in place a company policy,
26 practice and procedure that failed to correctly calculate overtime
27 compensation due to PLAINTIFFS and the members of the
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CALIFORNIA CLASS; and,

- (c) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.
- (d) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, by failing to pay the correct overtime wages to the PLAINTIFF and the members of the CALIFORNIA CLASS as legally required by the FLSA, and retaining the unpaid overtime to the benefit of DEFENDANT.

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

- (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, were subjected to the uniform employment practices of DEFENDANT and were non-exempt employees paid on an hourly basis who were subjected to DEFENDANT’s practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime

1 worked by the CALIFORNIA CLASS and thereby systematically
2 underpays overtime compensation to the CALIFORNIA CLASS.
3 PLAINTIFFS sustained economic injury as a result of DEFENDANT's
4 employment practices. PLAINTIFFS and the members of the
5 CALIFORNIA CLASS were and are similarly or identically harmed by
6 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
7 engaged in by DEFENDANT; and,

8 (d) The representative PLAINTIFFS will fairly and adequately represent and
9 protect the interest of the CALIFORNIA CLASS, and has retained
10 counsel who are competent and experienced in Class Action litigation.
11 There are no material conflicts between the claims of the representative
12 PLAINTIFFS and the members of the CALIFORNIA CLASS that would
13 make class certification inappropriate. Counsel for the CALIFORNIA
14 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
15 Members.

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

18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA CLASS will
21 create the risk of:

- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
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1 dispositive of interests of the other members not party to the
2 adjudication or substantially impair or impede their ability to
3 protect their interests.

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

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

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

24 1) The interests of the members of the CALIFORNIA CLASS in
25 individually controlling the prosecution or defense of separate
26 actions in that the substantial expense of individual actions will be
27 avoided to recover the relatively small amount of economic losses
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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 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 appropriate with respect to the CALIFORNIA CLASS as a whole;

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

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

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

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14 **THE CALIFORNIA LABOR SUB-CLASS**

15 30. PLAINTIFFS further bring the Second, Third, Fourth, Fifth and Sixth causes of
16 Action on behalf of a California sub-class, defined as all individuals who are or previously were
17 employed by DEFENDANT in California and classified as non-exempt employees (the
18 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to
19 the filing of the complaint and ending on the date as determined by the Court (the
20 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.

21 31. DEFENDANT, as a matter of company policy, practice and procedure, and in
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
23 requirements, and the applicable provisions of California law, intentionally, knowingly, and
24 wilfully, engaged in a practice whereby DEFENDANT failed to provide off duty meal and rest
25 periods to PLAINTIFFS and CALIFORNIA CLASS Members and failed to correctly calculate
26 overtime compensation for the overtime worked by PLAINTIFFS and the other members of the
27 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this

1 work, required employees to perform this work and permitted or suffered to permit this
2 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
3 CLASS Members overtime wages at the correct amount to which these employees are entitled
4 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
5 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
6 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

12 33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
13 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 16 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
17 overtime compensation to members of the CALIFORNIA LABOR SUB-
18 CLASS in violation of the California Labor Code and California
19 regulations and the applicable California Wage Order;
- 20 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
21 entitled to overtime compensation for overtime worked under the overtime
22 pay requirements of California law;
- 23 (c) Whether DEFENDANT failed to accurately record the applicable
24 overtime rates for all overtime worked PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS;
- 26 (d) Whether DEFENDANT failed to provide PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS with legally
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1 required uninterrupted thirty (30) minute meal breaks and rest periods;

2 (e) Whether DEFENDANT failed to provide PLAINTIFFS and the other
3 members of the CALIFORNIA LABOR SUB-CLASS with accurate
4 itemized wage statements;

5 (f) Whether DEFENDANT has engaged in unfair competition by the
6 above-listed conduct;

7 (g) The proper measure of damages and penalties owed to the members of the
8 CALIFORNIA LABOR SUB-CLASS; and,

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

10 35. DEFENDANT, as a matter of company policy, practice and procedure, failed to
11 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
12 Members and failed to provide accurate records of the applicable overtime rates for the
13 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
14 Members, including PLAINTIFFS, were non-exempt employees who were paid on an hourly
15 basis by DEFENDANT according to uniform and systematic company procedures as alleged
16 herein above. This business practice was uniformly applied to each and every member of the
17 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
18 adjudicated on a class-wide basis.

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

21 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
22 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
23 CLASS the correct overtime pay for which DEFENDANT is liable
24 pursuant to Cal. Lab. Code § 1194 & § 1198;

25 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
26 PLAINTIFFS and the other members of the CALIFORNIA CLASS with
27 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
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1 and the legally required rest breaks;

2 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
3 the members of the CALIFORNIA LABOR SUB-CLASS with an
4 accurate itemized statement in writing showing all accurate and applicable
5 overtime rates in effect during the pay period and the corresponding
6 amount of time worked at each overtime rate by the employee; and,

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

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

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

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

23 (c) The claims of the representative PLAINTIFFS are typical of the claims of
24 each member of the CALIFORNIA LABOR SUB-CLASS.
25 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
26 SUB-CLASS, were non-exempt employees paid on an hourly basis who
27 were subjected to the DEFENDANT's practice and policy described
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1 herein. PLAINTIFFS sustained economic injury as a result of
2 DEFENDANT's employment practices. PLAINTIFFS and the members
3 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
4 identically harmed by the same unlawful, deceptive, unfair and pervasive
5 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

- 20 1) Inconsistent or varying adjudications with respect to individual
21 members of the CALIFORNIA LABOR SUB-CLASS which
22 would establish incompatible standards of conduct for the parties
23 opposing the CALIFORNIA LABOR SUB-CLASS; or,
24 2) Adjudication with respect to individual members of the
25 CALIFORNIA LABOR SUB-CLASS which would as a practical
26 matter be dispositive of interests of the other members not party to
27 the adjudication or substantially impair or impede their ability to
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protect their interests.

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

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-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 LABOR SUB-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 LABOR SUB-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 LABOR SUB-CLASS, which would establish incompatible standards of

1 conduct for the DEFENDANT; and/or,

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

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

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

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

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

24 (b) A Class Action is superior to any other available method for the fair and
25 efficient adjudication of the claims of the members of the CALIFORNIA
26 LABOR SUB-CLASS because in the context of employment litigation a
27 substantial number of individual CALIFORNIA LABOR SUB-CLASS

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- Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
 - (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
 - (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
 - (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
 - (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
 - (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
 - (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour

1 related claims arising out of the conduct of DEFENDANT as to the
2 members of the CALIFORNIA LABOR SUB-CLASS.

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4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

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

7 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

13 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
14 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
15 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
16 competition as follows:

17 Any person who engages, has engaged, or proposes to engage in unfair
18 competition may be enjoined in any court of competent jurisdiction. The court
19 may make such orders or judgments, including the appointment of a receiver, as
20 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.

21 Cal. Bus. & Prof. Code § 17203.

22 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
23 engage in a business practice which violates California law, including but not limited to, the
24 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
25 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194 & 1198, the FLSA, for which this
26 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
27 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
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1 competition, including restitution of wages wrongfully withheld.

2 44. By the conduct alleged herein, DEFENDANT's practices were unlawful and
3 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
4 unscrupulous or substantially injurious to employees, and were without valid justification or
5 utility for which this Court should issue equitable and injunctive relief pursuant to Section
6 17203 of the California Business & Professions Code, including restitution of wages wrongfully
7 withheld.

8 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
9 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFFS, and
10 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
11 accurately to record the applicable rate of all overtime worked, and failed to provide the legally
12 required off duty meal and rest periods due to a systematic business practice that cannot be
13 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
14 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
15 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
16 restitution of wages wrongfully withheld.

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

21 47. By the conduct alleged herein, DEFENDANT's practices were also unfair and
22 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
23 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

2 49. PLAINTIFFS further demand on behalf of themselves and on behalf of each
3 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
4 was not timely provided as required by law.

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

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

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

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

25 54. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
26 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
27 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.

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1 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
2 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

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6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Overtime Compensation**

8 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

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

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

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

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

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

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

5 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
6 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
7 amount of overtime worked. As set forth herein, DEFENDANT's uniform policy and practice
8 was to unlawfully and intentionally deny timely payment of wages due for the overtime worked
9 by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
10 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
11 all overtime worked.

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

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

24 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
25 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
26 receive full compensation for all overtime worked.

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

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

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

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

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

4 69. 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 time 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 70. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS therefore request recovery of all unpaid wages, including overtime wages, according
14 to proof, interest, statutory costs, as well as the assessment of any statutory penalties against
15 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
16 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
17 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S
18 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
19 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
20 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
21 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
22 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
23 statutory costs.

24 ///

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26 **THIRD CAUSE OF ACTION**

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

[Cal. Lab. Code §§ 226.7 & 512]

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

71. 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.

72. During the CALIFORNIA CLASS PERIOD, DEFENDANT 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 often 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. 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 strict corporate policy and practice.

73. DEFENDANT further violated 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 each workday that a meal period was not provided.

74. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according

1 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
2 suit.

3
4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

23 77. DEFENDANT further violated California Labor Code §§ 226.7 and the
24 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
25 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
26 the applicable Wage Order, one additional hour of compensation at each employee's regular
27 rate of pay for each workday that rest period was not provided.

1 January 1, 2008, only the last four digits of his or her social security number or an
2 employee identification number other than a social security number may be shown on
3 the itemized statement,

4 (8) the name and address of the legal entity that is the employer, and

5 (9) all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate by the employee.

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

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

6
7 **SIXTH CAUSE OF ACTION**

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

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

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

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

15 84. Cal. Lab. Code § 200 provides that:

16 As used in this article:

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

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

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

23 86. Cal. Lab. Code § 202 provides, in relevant part, that:

24 If an employee not having a written contract for a definite period quits his or her
25 employment, his or her wages shall become due and payable not later than 72
26 hours thereafter, unless the employee has given 72 hours previous notice of his
27 or her intention to quit, in which case the employee is entitled to his or her wages
28 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

1 provide payment within 72 hours of the notice of quitting.

2 87. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
3 SUB-CLASS Members' employment contract.

4 88. Cal. Lab. Code § 203 provides:

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

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

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

17 **SEVENTH CAUSE OF ACTION**

18 **For Violation of the Private Attorneys General Act**

19 **[Cal. Lab. Code §§ 2698, *et seq.*]**

20 **(By Plaintiffs and Against All Defendants)**

21 91. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-90,
22 supra, as though fully set forth at this point.

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

6 93. Plaintiffs, and such persons that may be added from time to time who satisfy the
7 requirements and exhaust the administrative procedures under the Private Attorney General Act,
8 bring this Representative Action on behalf of the State of California with respect to themselves
9 and all individuals who are or previously were employed by Defendant L'Oreal USA S/D, Inc.
10 who worked in California and who were classified as non-exempt during the period March 6,
11 2017 to the earlier of the date of preliminary approval of this settlement or April 20, 2019 (the
12 "PAGA Period") (the "AGGRIEVED EMPLOYEES").

13 94. On January 29, 2018, Plaintiffs gave written notice by electronic mail to the Labor
14 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
15 the specific provisions of this code alleged to have been violated as required by Labor Code §
16 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
17 statutory waiting period for PLAINTIFFS to add these allegations to the Complaint has expired.
18 As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative
19 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with
20 respect to all AGGRIEVED EMPLOYEES as herein defined.

21 95. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because Defendant (a) failed to provide PLAINTIFFS and the other
23 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime, (b) failed
24 to properly record and provide legally required meal and rest periods, (c) failed to provide
25 accurate itemized wage statements, and (d) failed to pay wages when due, all in violation of the
26 applicable Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204, 226(a),
27 226.7, 510, 512, 558, 1194, 1198, and the applicable Industrial Wage Order(s), and thereby
28

1 gives rise to statutory penalties as a result of such conduct. PLAINTIFFS hereby seek recovery
2 of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS
4 and the other AGGRIEVED EMPLOYEES.

5
6 **EIGHTH CAUSE OF ACTION**

7 **Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")**

8 **(By PLAINTIFFS and the COLLECTIVE CLASS against DEFENDANT)**

9 96. PLAINTIFFS, and the other members of the COLLECTIVE CLASS, reallege
10 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 95
11 of this Complaint.

12 97. DEFENDANT is engaged in communication, business, and transmission
13 between the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C.
14 § 203(b).

15 98. PLAINTIFFS further bring the Eighth Cause of Action on behalf of a
16 COLLECTIVE CLASS in accordance with 29 U.S.C. § 216 defined as all persons who are or
17 were previously employed by DEFENDANT in California as non-exempt employees (the
18 "COLLECTIVE CLASS") at any time during the period three (3) years prior to the filing of the
19 Complaint and ending on the date as determined by the Court (the "COLLECTIVE CLASS
20 PERIOD").

21 99. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to
22 willful violations of the FLSA.

23 100. 29 U.S.C. § 207(a)(1) provides in pertinent part:

24 Except as otherwise provided in this section, no employer shall employ
25 any of his employees who in any workweek is engaged in commerce or
26 in the production of goods for commerce, or is employed in an
27 enterprise engaged in commerce or in the production of goods for
28 commerce, for a workweek longer than forty hours unless such
employee receives compensation for his employment in excess of the
hours above specified at a rate not less than one and one-half times the

1 regular rate at which he is employed.

2 101. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, the
3 PLAINTIFFS and the other members of the COLLECTIVE CLASS are entitled to
4 overtime compensation for all overtime hours actually worked, at a rate not less than
5 one and one-half times their regular rate of pay for all hours worked in excess of forty
6 (40) hours in any workweek. DEFENDANTS' failure to correctly calculate overtime
7 wages as required by federal law was willful and not in good faith.

8 102. During the COLLECTIVE CLASS PERIOD, PLAINTIFFS, and
9 other members of the COLLECTIVE CLASS, worked more than forty (40) hours in
10 a workweek.

11 103. At all relevant times, DEFENDANT required PLAINTIFFS and
12 COLLECTIVE CLASS Members to work off the clock without paying them for all the
13 time they were under DEFENDANT's control. PLAINTIFFS and COLLECTIVE
14 CLASS Members would clock out of DEFENDANT's timekeeping system, in order to
15 perform additional work for DEFENDANT as required to meet DEFENDANT's job
16 requirements. Specifically, DEFENDANT engaged in the uniform and systematic
17 practice of requiring PLAINTIFFS and COLLECTIVE CLASS Members to perform
18 work off the clock after clocking out in that DEFENDANT, as a condition of
19 employment, required these employees to wait for and submit to loss prevention
20 inspections after clocking out for meal breaks and at the end of each scheduled shift for
21 which DEFENDANT did not provide compensation for time spent awaiting and
22 performing the loss prevention inspections off the clock. As a result, PLAINTIFFS and
23 other COLLECTIVE CLASS Members forfeited overtime wages by working without
24 their time being correctly recorded and without compensation at the applicable overtime
25 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFFS and other
26 COLLECTIVE CLASS Members for all overtime worked, is evidenced by
27 DEFENDANT's business records. Thus, DEFENDANT failed to pay the PLAINTIFFS,
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1 and other members of the COLLECTIVE CLASS, overtime compensation for the hours
2 they have worked in excess of the maximum hours permissible by law as required by §
3 207 of the FLSA, even though the PLAINTIFFS, and the other members of the
4 COLLECTIVE CLASS, were regularly required to work, and did in fact work, overtime
5 hours.

6 104. For purposes of the Fair Labor Standards Act, the employment
7 practices of DEFENDANT were and are uniform throughout California in all
8 respects material to the claims asserted in this Complaint.

9 105. As a result of DEFENDANT's failure to pay the correct overtime
10 compensation for overtime hours worked, as required by the FLSA, PLAINTIFFS
11 and the members of the COLLECTIVE CLASS were damaged in an amount to be
12 proved at trial.

13 106. Therefore, PLAINTIFFS demand that they and the members of the
14 COLLECTIVE CLASS be paid the correct overtime compensation as required by the
15 FLSA for every hour of overtime worked plus interest and statutory costs as provided
16 by law.

17
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
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the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

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

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

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

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

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

3. On behalf of the COLLECTIVE CLASS:

A) That the Court certify the Eighth Cause of Action asserted by the

- 1 COLLECTIVE CLASS as an opt-in Class Action under 29 U.S.C. § 216(b);
2 B) Issue a declaratory finding that DEFENDANT's acts, policies, practices and
3 procedures complained of herein violated provisions of the Fair Labor
4 Standards Act; and
5 C) That the PLAINTIFFS and the COLLECTIVE CLASS members recover
6 compensatory damages and an equal amount of liquidated damages as
7 provided under the law and in 29 U.S.C. § 216(b).

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

10 (A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
11 General Act of 2004.

12 5. On all claims:

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

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

15 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
16 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.
17

18 Dated: April __, 2019

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

19
20
21 By: _____

Norman 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 __, 2019

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____
Norman Blumenthal
Attorneys for Plaintiffs

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EXHIBIT 1

BLUMENTHAL | ORDREHAUG BHOWMIK | BLOW LLP

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1004

January 29, 2018
CA1514

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

L'Oreal USA S/D, Inc.
Certified Mail # 70171450000202536847
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Angela Conti and Justine Mora ("Plaintiffs"), and other aggrieved employees in a lawsuit against L'Oreal USA S/D, Inc. ("Defendant"). Plaintiff Conti was employed by Defendant in California from June of 2010 to December of 2017 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control, including overtime worked. Plaintiff Mora was employed by Defendant in California from July of 2015 to November of 2017 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control, including overtime worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, including overtime wages, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, 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. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, 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 filed 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 incorporate 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 2695, *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 pending lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiffs and all aggrieved California 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.

EXHIBIT “C”

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Superior Court of California

County of Fresno

By: A. Ramos, Deputy

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

ANGELA CONTI and JUSTINE MORA,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

L'OREAL USA S/D, INC., a Corporation;
and Does 1 through 50, Inclusive,

Defendants.

Case No. 18CECG00816

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
7. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]; and,
8. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF 29 U.S.C. §§ 201, *et seq.*

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant L’Oreal USA S/D, Inc. (“DEFENDANT”) is a Corporation and at all
8 relevant times mentioned herein conducted and continues to conduct substantial and regular
9 business throughout California.

10 2. DEFENDANT was founded in 1999. DEFENDANT’s line of business includes
11 the retail sale of specialized lines of merchandise.

12 3. Plaintiff Conti was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from June of 2010 to December
14 8, 2017.

15 4. Plaintiff Mora was employed by DEFENDANT in California as a non-exempt
16 employee entitled to overtime pay and meal and rest periods from July of 2015 to November
17 of 2017.

18 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
19 class, defined as all individuals who are or previously were employed by Defendant L’Oreal
20 USA S/D, Inc. who worked in California, were classified as non-exempt, and who separated
21 from their employment between March 6, 2014 and February 20, 2018 (the “CALIFORNIA
22 CLASS PERIOD”).

23 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
24 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
25 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy
26 and practice which failed to lawfully compensate these employees for all their overtime worked.
27 DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and deceptive
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1 business practice whereby DEFENDANT retained and continues to retain wages due
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
3 other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
4 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
6 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

24
25 **THE CONDUCT**

26 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
27 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all time worked,
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1 meaning the time during which an employee is subject to the control of an employer, including
2 all the time the employee is suffered or permitted to work. DEFENDANT required
3 PLAINTIFFS and CALIFORNIA CLASS Members to work off the clock without paying them
4 for all the time they were under DEFENDANT's control. PLAINTIFFS and CALIFORNIA
5 CLASS Members would clock out of DEFENDANT's timekeeping system, in order to perform
6 additional work for DEFENDANT as required to meet DEFENDANT's job requirements.
7 Specifically, During the CALIFORNIA CLASS PERIOD, DEFENDANT engaged in the
8 uniform and systematic practice of requiring PLAINTIFFS and CALIFORNIA CLASS
9 Members to perform work off the clock after clocking out in that DEFENDANT, as a condition
10 of employment, required these employees to wait for and submit to loss prevention inspections
11 after clocking out for meal breaks and at the end of each scheduled shift for which
12 DEFENDANT did not provide compensation for time spent awaiting and performing the loss
13 prevention inspections off the clock. As a result, PLAINTIFFS and other CALIFORNIA
14 CLASS Members forfeited overtime wages by working without their time being correctly
15 recorded and without compensation at the applicable overtime rates. DEFENDANT's uniform
16 policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all
17 overtime worked, is evidenced by DEFENDANT's business records.

18 10. In violation of the applicable sections of the California Labor Code and the
19 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
20 a matter of company policy, practice and procedure, intentionally and knowingly failed to
21 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct
22 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
23 intended to purposefully avoid the payment of the correct overtime compensation as required
24 by California law which allowed 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.

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

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

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

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

20 15. Specifically as to PLAINTIFFS, they were from time to time unable to take off
21 duty meal and rest breaks and were not fully relieved of duty for their meal and rest periods and
22 were not paid all overtime wages due to them as a result of DEFENDANT's policy that required
23 them to work off the clock. PLAINTIFFS were required to perform work as ordered by
24 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
25 break. Further, DEFENDANT failed to provide PLAINTIFFS with a second off-duty meal
26 period each workday in which they were required by DEFENDANT to work ten (10) hours of
27 work. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation
28

1 and in accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT
2 also provided PLAINTIFFS with a pay stub that failed to accurately display PLAINTIFFS'
3 correct rates of overtime pay and payments for missed meal and rest periods for certain pay
4 periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid
5 PLAINTIFFS the overtime compensation still owed to them or any penalty wages owed to them
6 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does
7 not exceed the sum or value of \$75,000.

8
9 **JURISDICTION AND VENUE**

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

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

19
20 **THE CALIFORNIA CLASS**

21 18. PLAINTIFFS bring 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
24 all individuals who are or previously were employed by Defendant L'Oreal USA S/D, Inc. who
25 worked in California, were classified as non-exempt, and who separated from their employment
26 between March 6, 2014 and February 20, 2018 (the "CALIFORNIA CLASS PERIOD").

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

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

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

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

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

13 24. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

17 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
18 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
19 place company policies, practices and procedures that failed to pay all
20 wages due the CALIFORNIA CLASS for all overtime worked, and failed
21 to accurately record the applicable rates of all overtime worked by the
22 CALIFORNIA CLASS;

23 (b) Committing an act of unfair competition in violation of the California
24 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
25 unlawfully, unfairly, and/or deceptively having in place a company policy,
26 practice and procedure that failed to correctly calculate overtime
27 compensation due to PLAINTIFFS and the members of the
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1 CALIFORNIA CLASS; and,

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

6 (d) Committing an act of unfair competition in violation of the California
7 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
8 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
9 *seq.*, by failing to pay the correct overtime wages to the PLAINTIFF and
10 the members of the CALIFORNIA CLASS as legally required by the
11 FLSA, and retaining the unpaid overtime to the benefit of DEFENDANT.

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

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

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

21 (c) The claims of the representative PLAINTIFFS are typical of the claims of
22 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
23 other members of the CALIFORNIA CLASS, were subjected to the
24 uniform employment practices of DEFENDANT and were non-exempt
25 employees paid on an hourly basis who were subjected to
26 DEFENDANT’s practice and policy which failed to pay the correct rate
27 of overtime wages due to the CALIFORNIA CLASS for all overtime
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1 worked by the CALIFORNIA CLASS and thereby systematically
2 underpays overtime compensation to the CALIFORNIA CLASS.
3 PLAINTIFFS sustained economic injury as a result of DEFENDANT's
4 employment practices. PLAINTIFFS and the members of the
5 CALIFORNIA CLASS were and are similarly or identically harmed by
6 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
7 engaged in by DEFENDANT; and,

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

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

- 18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA CLASS will
21 create the risk of:
- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
 - 26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
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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. Including the correct overtime rate, for all worked by the 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 seeks 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

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

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

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

8 29. DEFENDANT maintains records from which the Court can ascertain and identify

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

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

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

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

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THE CALIFORNIA LABOR SUB-CLASS

15 30. PLAINTIFFS further bring the Second, Third, Fourth, Fifth and Sixth causes of

16 Action on behalf of a California sub-class, defined as all individuals who are or previously were

17 employed by DEFENDANT in California and classified as non-exempt employees (the

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

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

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

21 31. DEFENDANT, as a matter of company policy, practice and procedure, and in

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

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

24 wilfully, engaged in a practice whereby DEFENDANT failed to provide off duty meal and rest

25 periods to PLAINTIFFS and CALIFORNIA CLASS Members and failed to correctly calculate

26 overtime compensation for the overtime worked by PLAINTIFFS and the other members of the

27 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this

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1 work, required employees to perform this work and permitted or suffered to permit this
2 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
3 CLASS Members overtime wages at the correct amount to which these employees are entitled
4 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
5 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
6 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

12 33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
13 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 16 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
17 overtime compensation to members of the CALIFORNIA LABOR SUB-
18 CLASS in violation of the California Labor Code and California
19 regulations and the applicable California Wage Order;
- 20 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
21 entitled to overtime compensation for overtime worked under the overtime
22 pay requirements of California law;
- 23 (c) Whether DEFENDANT failed to accurately record the applicable
24 overtime rates for all overtime worked PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS;
- 26 (d) Whether DEFENDANT failed to provide PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS with legally
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- 1 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 2 (e) Whether DEFENDANT failed to provide PLAINTIFFS and the other
- 3 members of the CALIFORNIA LABOR SUB-CLASS with accurate
- 4 itemized wage statements;
- 5 (f) Whether DEFENDANT has engaged in unfair competition by the
- 6 above-listed conduct;
- 7 (g) The proper measure of damages and penalties owed to the members of the
- 8 CALIFORNIA LABOR SUB-CLASS; and,
- 9 (h) Whether DEFENDANT's conduct was willful.

10 35. DEFENDANT, as a matter of company policy, practice and procedure, failed to

11 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS

12 Members and failed to provide accurate records of the applicable overtime rates for the

13 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS

14 Members, including PLAINTIFFS, were non-exempt employees who were paid on an hourly

15 basis by DEFENDANT according to uniform and systematic company procedures as alleged

16 herein above. This business practice was uniformly applied to each and every member of the

17 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be

18 adjudicated on a class-wide basis.

19 36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS

20 under California law by:

- 21 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 22 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
- 23 CLASS the correct overtime pay for which DEFENDANT is liable
- 24 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 25 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
- 26 PLAINTIFFS and the other members of the CALIFORNIA CLASS with
- 27 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
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1 and the legally required rest breaks;

2 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
3 the members of the CALIFORNIA LABOR SUB-CLASS with an
4 accurate itemized statement in writing showing all accurate and applicable
5 overtime rates in effect during the pay period and the corresponding
6 amount of time worked at each overtime rate by the employee; and,

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

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

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

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

23 (c) The claims of the representative PLAINTIFFS are typical of the claims of
24 each member of the CALIFORNIA LABOR SUB-CLASS.
25 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
26 SUB-CLASS, were non-exempt employees paid on an hourly basis who
27 were subjected to the DEFENDANT's practice and policy described
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1 herein. PLAINTIFFS sustained economic injury as a result of
2 DEFENDANT's employment practices. PLAINTIFFS and the members
3 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
4 identically harmed by the same unlawful, deceptive, unfair and pervasive
5 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

- 20 1) Inconsistent or varying adjudications with respect to individual
21 members of the CALIFORNIA LABOR SUB-CLASS which
22 would establish incompatible standards of conduct for the parties
23 opposing the CALIFORNIA LABOR SUB-CLASS; or,
24 2) Adjudication with respect to individual members of the
25 CALIFORNIA LABOR SUB-CLASS which would as a practical
26 matter be dispositive of interests of the other members not party to
27 the adjudication or substantially impair or impede their ability to

1 protect their interests.

2 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
3 or refused to act on grounds generally applicable to the CALIFORNIA
4 LABOR SUB-CLASS, making appropriate class-wide relief with respect
5 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
6 DEFENDANT uniformly failed to pay all wages due. Including the
7 correct overtime rate, for all overtime worked by the members of the
8 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

23 2) Class certification will obviate the need for unduly duplicative
24 litigation that would create the risk of:

25 A. Inconsistent or varying adjudications with respect to
26 individual members of the CALIFORNIA LABOR SUB-
27 CLASS, which would establish incompatible standards of
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- Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
 - (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
 - (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
 - (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
 - (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
 - (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
 - (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour

1 related claims arising out of the conduct of DEFENDANT as to the
2 members of the CALIFORNIA LABOR SUB-CLASS.

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4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

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

7 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

13 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
14 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
15 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
16 competition as follows:

17 Any person who engages, has engaged, or proposes to engage in unfair
18 competition may be enjoined in any court of competent jurisdiction. The court
19 may make such orders or judgments, including the appointment of a receiver, as
20 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.

21 Cal. Bus. & Prof. Code § 17203.

22 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
23 engage in a business practice which violates California law, including but not limited to, the
24 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
25 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194 & 1198, the FLSA, for which this
26 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
27 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
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1 competition, including restitution of wages wrongfully withheld.

2 44. By the conduct alleged herein, DEFENDANT's practices were unlawful and
3 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
4 unscrupulous or substantially injurious to employees, and were without valid justification or
5 utility for which this Court should issue equitable and injunctive relief pursuant to Section
6 17203 of the California Business & Professions Code, including restitution of wages wrongfully
7 withheld.

8 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
9 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFFS, and
10 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
11 accurately to record the applicable rate of all overtime worked, and failed to provide the legally
12 required off duty meal and rest periods due to a systematic business practice that cannot be
13 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
14 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
15 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
16 restitution of wages wrongfully withheld.

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

21 47. By the conduct alleged herein, DEFENDANT's practices were also unfair and
22 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
23 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

2 49. PLAINTIFFS further demand on behalf of themselves and on behalf of each
3 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
4 was not timely provided as required by law.

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

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

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

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

25 54. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
26 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
27 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.

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1 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
2 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

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6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Overtime Compensation**

8 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

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

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

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

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

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

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

5 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
6 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
7 amount of overtime worked. As set forth herein, DEFENDANT's uniform policy and practice
8 was to unlawfully and intentionally deny timely payment of wages due for the overtime worked
9 by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
10 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
11 all overtime worked.

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

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

24 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
25 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
26 receive full compensation for all overtime worked.

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

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

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

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

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

4 69. 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 time 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 70. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS therefore request recovery of all unpaid wages, including overtime wages, according
14 to proof, interest, statutory costs, as well as the assessment of any statutory penalties against
15 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
16 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
17 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S
18 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
19 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
20 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
21 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
22 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
23 statutory costs.

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26 **THIRD CAUSE OF ACTION**

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

[Cal. Lab. Code §§ 226.7 & 512]

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

71. 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.

72. During the CALIFORNIA CLASS PERIOD, DEFENDANT 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 often 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. 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 strict corporate policy and practice.

73. DEFENDANT further violated 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 each workday that a meal period was not provided.

74. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according

1 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
2 suit.

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4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

23 77. DEFENDANT further violated California Labor Code §§ 226.7 and the
24 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
25 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
26 the applicable Wage Order, one additional hour of compensation at each employee's regular
27 rate of pay for each workday that rest period was not provided.

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

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6 **FIFTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 226]**

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

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

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

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

4 (8) the name and address of the legal entity that is the employer, and

5 (9) all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate by the employee.

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

21 82. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
22 Code § 226, causing injury and damages to the PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct rates for the overtime worked and the amount of employment
25 taxes which were not properly paid to state and federal tax authorities. These damages are
26 difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA
27 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the

1 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
2 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
3 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
4 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS
5 herein).

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7 **SIXTH CAUSE OF ACTION**

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

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

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

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

15 84. Cal. Lab. Code § 200 provides that:

16 As used in this article:

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

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

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

23 86. Cal. Lab. Code § 202 provides, in relevant part, that:

24 If an employee not having a written contract for a definite period quits his or her
25 employment, his or her wages shall become due and payable not later than 72
26 hours thereafter, unless the employee has given 72 hours previous notice of his
27 or her intention to quit, in which case the employee is entitled to his or her wages
28 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

1 provide payment within 72 hours of the notice of quitting.

2 87. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
3 SUB-CLASS Members' employment contract.

4 88. Cal. Lab. Code § 203 provides:

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

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

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

17 **SEVENTH CAUSE OF ACTION**

18 **For Violation of the Private Attorneys General Act**

19 **[Cal. Lab. Code §§ 2698, *et seq.*]**

20 **(By Plaintiffs and Against All Defendants)**

21 91. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-90,
22 supra, as though fully set forth at this point.

23 92. PAGA is a mechanism by which the State of California itself can enforce state
24 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
25 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
26 fundamentally a law enforcement action designed to protect the public and not to benefit private
27 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
28

1 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
2 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
3 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
4 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
5 subject to arbitration.

6 93. Plaintiffs, and such persons that may be added from time to time who satisfy the
7 requirements and exhaust the administrative procedures under the Private Attorney General Act,
8 bring this Representative Action on behalf of the State of California with respect to themselves
9 and all individuals who are or previously were employed by Defendant L'Oreal USA S/D, Inc.
10 who worked in California and who were classified as non-exempt during the period March 6,
11 2017 to the earlier of the date of preliminary approval of this settlement or April 20, 2019 (the
12 "PAGA Period") (the "AGGRIEVED EMPLOYEES").

13 94. On January 29, 2018, Plaintiffs gave written notice by electronic mail to the Labor
14 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
15 the specific provisions of this code alleged to have been violated as required by Labor Code §
16 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein. The
17 statutory waiting period for PLAINTIFFS to add these allegations to the Complaint has expired.
18 As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative
19 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with
20 respect to all AGGRIEVED EMPLOYEES as herein defined.

21 95. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because Defendant (a) failed to provide PLAINTIFFS and the other
23 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime, (b) failed
24 to properly record and provide legally required meal and rest periods, (c) failed to provide
25 accurate itemized wage statements, and (d) failed to pay wages when due, all in violation of the
26 applicable Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204, 226(a),
27 226.7, 510, 512, 558, 1194, 1198, and the applicable Industrial Wage Order(s), and thereby

1 gives rise to statutory penalties as a result of such conduct. PLAINTIFFS hereby seek recovery
2 of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS
4 and the other AGGRIEVED EMPLOYEES.

5
6 **EIGHTH CAUSE OF ACTION**

7 **Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")**

8 **(By PLAINTIFFS and the COLLECTIVE CLASS against DEFENDANT)**

9 96. PLAINTIFFS, and the other members of the COLLECTIVE CLASS, reallege
10 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 95
11 of this Complaint.

12 97. DEFENDANT is engaged in communication, business, and transmission
13 between the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C.
14 § 203(b).

15 98. PLAINTIFFS further bring the Eighth Cause of Action on behalf of a
16 COLLECTIVE CLASS in accordance with 29 U.S.C. § 216 defined as all persons who are or
17 were previously employed by DEFENDANT in California as non-exempt employees (the
18 "COLLECTIVE CLASS") at any time during the period three (3) years prior to the filing of the
19 Complaint and ending on the date as determined by the Court (the "COLLECTIVE CLASS
20 PERIOD").

21 99. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to
22 willful violations of the FLSA.

23 100. 29 U.S.C. § 207(a)(1) provides in pertinent part:

24 Except as otherwise provided in this section, no employer shall employ
25 any of his employees who in any workweek is engaged in commerce or
26 in the production of goods for commerce, or is employed in an
27 enterprise engaged in commerce or in the production of goods for
28 commerce, for a workweek longer than forty hours unless such
employee receives compensation for his employment in excess of the
hours above specified at a rate not less than one and one-half times the

1 regular rate at which he is employed.

2 101. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, the
3 PLAINTIFFS and the other members of the COLLECTIVE CLASS are entitled to
4 overtime compensation for all overtime hours actually worked, at a rate not less than
5 one and one-half times their regular rate of pay for all hours worked in excess of forty
6 (40) hours in any workweek. DEFENDANTS' failure to correctly calculate overtime
7 wages as required by federal law was willful and not in good faith.

8 102. During the COLLECTIVE CLASS PERIOD, PLAINTIFFS, and
9 other members of the COLLECTIVE CLASS, worked more than forty (40) hours in
10 a workweek.

11 103. At all relevant times, DEFENDANT required PLAINTIFFS and
12 COLLECTIVE CLASS Members to work off the clock without paying them for all the
13 time they were under DEFENDANT's control. PLAINTIFFS and COLLECTIVE
14 CLASS Members would clock out of DEFENDANT's timekeeping system, in order to
15 perform additional work for DEFENDANT as required to meet DEFENDANT's job
16 requirements. Specifically, DEFENDANT engaged in the uniform and systematic
17 practice of requiring PLAINTIFFS and COLLECTIVE CLASS Members to perform
18 work off the clock after clocking out in that DEFENDANT, as a condition of
19 employment, required these employees to wait for and submit to loss prevention
20 inspections after clocking out for meal breaks and at the end of each scheduled shift for
21 which DEFENDANT did not provide compensation for time spent awaiting and
22 performing the loss prevention inspections off the clock. As a result, PLAINTIFFS and
23 other COLLECTIVE CLASS Members forfeited overtime wages by working without
24 their time being correctly recorded and without compensation at the applicable overtime
25 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFFS and other
26 COLLECTIVE CLASS Members for all overtime worked, is evidenced by
27 DEFENDANT's business records. Thus, DEFENDANT failed to pay the PLAINTIFFS,

1 and other members of the COLLECTIVE CLASS, overtime compensation for the hours
2 they have worked in excess of the maximum hours permissible by law as required by §
3 207 of the FLSA, even though the PLAINTIFFS, and the other members of the
4 COLLECTIVE CLASS, were regularly required to work, and did in fact work, overtime
5 hours.

6 104. For purposes of the Fair Labor Standards Act, the employment
7 practices of DEFENDANT were and are uniform throughout California in all
8 respects material to the claims asserted in this Complaint.

9 105. As a result of DEFENDANT's failure to pay the correct overtime
10 compensation for overtime hours worked, as required by the FLSA, PLAINTIFFS
11 and the members of the COLLECTIVE CLASS were damaged in an amount to be
12 proved at trial.

13 106. Therefore, PLAINTIFFS demand that they and the members of the
14 COLLECTIVE CLASS be paid the correct overtime compensation as required by the
15 FLSA for every hour of overtime worked plus interest and statutory costs as provided
16 by law.

17
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
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the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

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

3. On behalf of the COLLECTIVE CLASS:

- A) That the Court certify the Eighth Cause of Action asserted by the

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COLLECTIVE CLASS as an opt-in Class Action under 29 U.S.C. § 216(b);

- B) Issue a declaratory finding that DEFENDANT's acts, policies, practices and procedures complained of herein violated provisions of the Fair Labor Standards Act; and
- C) That the PLAINTIFFS and the COLLECTIVE CLASS members recover compensatory damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b).

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

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

5. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

Dated: April 30, 2019

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP



By: Norman 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 30, 2019

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP



By: _____
Norman Blumenthal
Attorneys for Plaintiffs

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

January 29, 2018
CA1514

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

L'Oreal USA S/D, Inc.
Certified Mail # 70171450000202536847
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Angela Conti and Justine Mora (“Plaintiffs”), and other aggrieved employees in a lawsuit against L’Oreal USA S/D, Inc. (“Defendant”). Plaintiff Conti was employed by Defendant in California from June of 2010 to December of 2017 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control, including overtime worked. Plaintiff Mora was employed by Defendant in California from July of 2015 to November of 2017 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control, including overtime worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, including overtime wages, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, 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. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, 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 filed 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 incorporate 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 2695, *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 pending lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiffs and all aggrieved California 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.

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BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
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2255 Calle Clara
La Jolla, CA 92037
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Facsimile: (858) 551-1232

E-FILED

4/30/2019 2:52 PM
Superior Court of California
County of Fresno
By: A. Ramos, Deputy

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO**

ANGELA CONTI and JUSTINE MORA,
individuals, on behalf of themselves, and
on behalf of all persons similarly situated,

CASE No. 18CECG00816

Plaintiff,

PROOF OF SERVICE

vs.

L'OREAL USA S/D, INC., a Corporation;
and Does 1 through 50, Inclusive,

Action Filed: March 6, 2018

Defendants.

1 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

2 I, Ricardo R. Ehmann, am employed in the County of San Diego, State of California. I am
3 over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La
4 Jolla, California 92037.

5 On April 30, 2019, I served the document(s) described as:

6 **1. SECOND AMENDED CLASS ACTION COMPLAINT**

7
8 X (BY MAIL): I caused each such envelope, with postage thereon fully prepaid, to be placed in
9 the United States mail at San Diego, California. I am readily familiar with this firm's
10 business practice for collection and processing of correspondence for mailing with the U.S.
11 Postal Service pursuant to which practice the correspondence will be deposited with the U.S.
12 Postal Service this same day in the ordinary course of business (C.C.P. Section 10139a);
13 2015.5):

14 Angela J. Rafter
15 LITTLER MENDELSON, P.C.
16 333 Bush St. 34th Floor
17 San Francisco, CA 94104

18 Irene V. Fitzgerald
19 LITTLER MENDELSON, P.C.
20 5200 North Palm Ave., Suite 302
21 Fresno, CA 93704

22 Attorneys for Defendant

23 X (State): I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct.

25 Executed on April 30, 2019, at La Jolla, California.

26 

27 _____
28 Ricardo R. Ehmann

EXHIBIT “D”

1 ANGELA J. RAFOTH, Bar No. 241966
LITTLER MENDELSON, P.C.
2 333 Bush Street, 34th Floor
San Francisco, CA 94104
3 Telephone: 415.433.1940
Email: ARafoth@littler.com

4 IRENE V. FITZGERALD, Bar No. 266949
LITTLER MENDELSON, P.C.
5 5200 North Palm Avenue, Suite 302
Fresno, CA 93704.2225
6 Telephone: 559.244.7500
7 Email: ifitzgerald@littler.com

E-FILED
5/28/2019 3:22 PM
Superior Court of California
County of Fresno
By: I. Herrera, Deputy

8 Attorneys for Defendant, L'OREAL USA S/D, INC.
9

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF FRESNO

12 ANGELA CONTI and JUSTINE MORA,
13 individuals, on behalf of themselves, and
on behalf of all persons similarly situated,

14 Plaintiffs,

15 v.

16 L'OREAL USA S/D, INC., a Corporation;
17 and DOES 1 through 50, inclusive,

18 Defendant.

Case No. 18CECG00816

**DEFENDANT L'OREAL USA S/D, INC.'S
ANSWER TO SECOND AMENDED CLASS
ACTION COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO JUDGE
JEFFREY HAMILTON

First Amended Complaint filed: April 9, 2018
Trial Date: TBD

19 Defendant L'OREAL USA S/D, INC. ("L'OREAL") hereby answers the unverified
20 Second Amended Class Action Complaint ("SAC") filed by Plaintiffs ANGELA CONTI and
21 JUSTINE MORA ("Plaintiffs") on behalf of themselves and all others similarly situated in the
22 above-referenced action.

23 **GENERAL DENIAL**

24 Pursuant to the provisions of the California Code of Civil Procedure section
25 431.30(d), L'OREAL denies generally and specifically each and every allegation contained in the
26 SAC. In addition, L'OREAL denies Plaintiffs have sustained, or will sustain, any loss or damages in
27 the manner or amount alleged, or otherwise, by reason of any act or omission, or any other conduct
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1 or absence thereof on the part of L'OREAL. L'OREAL further denies that any of the claims asserted
2 by Plaintiffs is suitable for class, collective, or representative treatment or adjudication.

3 **AFFIRMATIVE AND OTHER DEFENSES**

4 L'OREAL asserts the following affirmative and other defenses, which it designates,
5 collectively, as "affirmative defenses." L'OREAL's designation of its defenses as "affirmative" is
6 not intended in any way to alter Plaintiffs' burden of proof with regard to any element of their causes
7 of action. L'OREAL also expressly denies the existence of any alleged putative class of persons or
8 "aggrieved employees" that Plaintiffs purport to represent in this lawsuit. L'OREAL incorporates
9 (as if fully set forth therein) this express denial each and every time it references "Plaintiffs."

10 **FIRST AFFIRMATIVE DEFENSE**

11 (General Denial)

12 L'OREAL alleges that Plaintiffs' SAC, and every alleged cause of action therein, fails
13 to state a claim sufficient to constitute a cause of action.

14 **SECOND AFFIRMATIVE DEFENSE**

15 (Statute of Limitations)

16 L'OREAL alleges that Plaintiffs' SAC, and every cause of action therein, is barred by
17 the applicable statutes of limitations set forth in Code of Civil Procedure sections 338 and 340(a),
18 Labor Code section 203, Business and Professions Code section 17208, 29 U.S. Code § 255 and/or
19 any other applicable statute of limitations.

20 **THIRD AFFIRMATIVE DEFENSE**

21 (PAGA – No Standing)

22 L'OREAL alleges that Plaintiffs lack standing to bring claims for any civil penalties
23 on behalf of others because they are not an "aggrieved employee" pursuant to the Labor Code
24 Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 et seq.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 (PAGA – Failure To Exhaust)

27 L'OREAL alleges that Plaintiffs failed to exhaust all internal grievance procedures
28 and administrative remedies and failed to timely provide the Labor Workforce Development Agency

1 (“LWDA”) and Defendant with proper notification of the claims and/or to adequately describe their
2 claims or the “aggrieved employees” on whose behalf they intend to seek penalties, pursuant to the
3 PAGA.

4 **FIFTH AFFIRMATIVE DEFENSE**
(PAGA – Failure To Identify)

5 L’OREAL alleges that Plaintiffs have failed to adequately identify any other
6 allegedly “aggrieved employees,” as required by the PAGA.

7 **SIXTH AFFIRMATIVE DEFENSE**
8 (PAGA – Determination Of Penalties)

9 L’OREAL alleges that civil penalties that Plaintiffs seek pursuant to the PAGA
10 cannot be determined on a class-wide or representative basis.

11 **SEVENTH AFFIRMATIVE DEFENSE**
12 (PAGA – Determination Of Penalties)

13 L’OREAL alleges that any penalties awarded against it pursuant to the PAGA would
14 be unjust, arbitrary, oppressive or confiscatory.

15 **EIGHTH AFFIRMATIVE DEFENSE**
16 (PAGA – No Statutory Penalties)

17 L’OREAL alleges that Plaintiffs cannot recover statutory penalties on behalf of other
18 “aggrieved employees” pursuant to the PAGA.

19 **NINTH AFFIRMATIVE DEFENSE**
20 (PAGA – Constitutionality)

21 L’OREAL alleges that the imposition of civil penalties pursuant to the PAGA is
22 unconstitutional under the California and United States constitutions.

23 **TENTH AFFIRMATIVE DEFENSE**
24 (Labor Code §226(a) – No Violation)

25 L’OREAL alleges that it has provided compliant wage statements because they show
26 all of the categories of information required by Labor Code section 226(a).
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ELEVENTH AFFIRMATIVE DEFENSE
(Labor Code §226(e) – No Injury)

L'OREAL alleges that, even assuming arguendo Plaintiffs were not provided with a compliant wage statement, Plaintiffs are not entitled to recover any damages or penalties because, pursuant to California Labor Code section 226(e), they did not suffer any injuries as a result.

TWELFTH AFFIRMATIVE DEFENSE
(Labor Code §226(e) – No Intentionality)

L'OREAL alleges that, even assuming arguendo Plaintiffs were not provided with a compliant wage statement, Plaintiffs are not entitled to recover any damages or penalties because L'OREAL's alleged failure to comply with California Labor Code section 226(a) was not a "knowing and intentional" under California Labor Code section 226(e).

THIRTEENTH AFFIRMATIVE DEFENSE
(CCP § 382 – Class Action Requirements)

L'OREAL alleges that this suit may not be properly maintained as a class action because: (a) Plaintiffs have failed to plead and/or cannot establish the necessary procedural elements for class treatment; (b) the number of putative class members is too small to meet the numerosity requirement for a class action; (c) a class action is not an appropriate method for the fair and efficient adjudication of the claims described in the SAC; (d) common issues of facts or law do not predominate and, to the contrary, individual issues predominate; (e) Plaintiffs' claims are not representative or typical of the claims of the putative class; (f) Plaintiffs are not a proper class representative; (g) the named Plaintiffs and alleged putative class counsel are not adequate representatives for the alleged putative class; and/or (h) Plaintiffs cannot satisfy any of the requirements for class action treatment set forth in California Code of Civil Procedure section 382 or Federal Rule of Civil Procedure 23. If the Court certifies a class in this case over L'OREAL's objections, then L'OREAL asserts the additional defenses set forth herein against each and every member of the certified class.

///
///

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 (Equitable Defenses)

3 L'OREAL alleges that Plaintiffs' SAC, and every alleged cause of action therein, is
4 barred in whole or in part to the extent it is subject to the equitable doctrines, of laches, unclean
5 hands, waiver, and estoppel.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 (Claims Subject To Arbitration)

8 L'OREAL alleges that the Court lacks jurisdiction over the claims alleged in
9 Plaintiffs' SAC to the extent that Plaintiffs, and/or some or all of those they purport to represent, are
10 subject to a valid and enforceable arbitration agreement requiring the arbitration of those
11 individual's claims.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 (No Class Arbitration Claims)

14 L'OREAL alleges that the class and representative allegations of the SAC are barred
15 because Plaintiffs, and/or some or all of those they purport to represent, and L'OREAL agreed to
16 submit only individual disputes to arbitration.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 (Satisfaction of Obligations)

19 L'OREAL alleges that Plaintiffs' SAC, and every alleged cause of action therein, is
20 barred because, to the extent L'OREAL owed any duties or obligations to Plaintiffs, such duties or
21 obligations have been fully performed, satisfied or discharged.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 (Injury Caused by Plaintiff)

24 L'OREAL alleges that Plaintiffs' SAC, and every alleged cause of action therein,
25 cannot be maintained against L'OREAL because any alleged losses or harms sustained by Plaintiffs
26 resulted from causes other than any act or omission of any L'OREAL.

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NINETEENTH AFFIRMATIVE DEFENSE
(No Equitable Relief)

L'OREAL alleges that Plaintiffs' SAC, and each and every cause of action alleged therein, is barred to the extent Plaintiffs seek equitable relief because there is an adequate remedy at law.

TWENTIETH AFFIRMATIVE DEFENSE
(Voluntary Waiver)

Defendant alleges that, to the extent that Plaintiffs, and/or some or all of the employees Plaintiffs purport to represent, did not take a meal period or rest break, it was because he/she: (1) failed to take breaks that were provided to him/her in compliance with California law; (2) chose not to take breaks that were authorized and permitted; or (3) waived his/her right to meal periods and/or rest breaks.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Bona Fide Dispute)

Defendant alleges that the Complaint fails to state a claim for penalties under the California Labor Code in that (1) there was a bona fide, good faith dispute as to Defendant's obligations under any applicable Labor Code provisions, including, without limitation, Labor Code section 203, and (2) Defendant did not willfully violate Labor Code section 203.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Offset To Injury)

L'OREAL alleges that any recovery by Plaintiffs under any of the causes of action alleged in the SAC must be offset by any benefits and/or other monies they, and those they seek to represent, have received from L'OREAL.

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1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 (FLSA Claims – Willfulness)

3 AS A SEPARATE DEFENSE, Defendant alleges that Plaintiffs' purported FLSA
4 claims are barred in whole or in part in that Defendant's alleged acts are not willful and that the
5 claims of Plaintiffs arising under the FLSA more than two years before filing this Second Amended
6 Complaint are therefore barred by the statute of limitations set forth in the Portal-to-Portal Act.

7 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

8 (FLSA Claims – No Penalty)

9 AS A SEPARATE DEFENSE, Defendant alleges that Plaintiffs are not entitled to a
10 penalty award under the FLSA (29 U.S.C. §207).

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 (Class Certification – Class And Collective Action Mechanisms)

13 AS A SEPARATE DEFENSE, Defendant alleges that a class action is not the
14 superior method of adjudicating Plaintiffs' alleged state law claims in light of the opt-in mechanism
15 contemplated by the FLSA collective action. Use of both mechanisms will confuse potential class
16 members and burden the Court and thus a class action should not be permitted. *See e.g. Leuthold v.*
17 *Destination America* (N.D. Cal. 2004) 224 F.R.D. 462.

18 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

19 (Minimum Wage and Overtime Claims – Good Faith)

20 AS A SEPARATE DEFENSE, Defendant alleges that at all times it acted in good
21 faith to comply with the FLSA and the California Labor Code and Wage Order(s) and with
22 reasonable grounds to believe that its actions did not violate the FLSA and/or the California Labor
23 Code and Wage Order(s), and Defendant asserts a lack of willfulness or intent to violate the FLSA
24 and/or the California Labor Code and Wage Order(s) as a defense to any claim by Plaintiff for
25 liquidated damages.

26 **ADDITIONAL AFFIRMATIVE AND OTHER DEFENSES**

27 L'OREAL presently has insufficient knowledge or information upon which to form a
28 belief as to whether there may be additional, as yet unstated, defenses and reserves the right to assert

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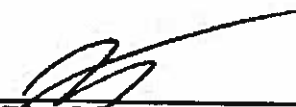
additional defenses or affirmative defenses in the event discovery indicates such defenses are appropriate.

PRAYER FOR RELIEF

WHEREFORE, L'OREAL prays for relief as follows:

1. That Plaintiffs take nothing and that the SAC be dismissed in its entirety with prejudice;
2. That judgment be entered in L'OREAL's favor;
3. That L'OREAL be awarded such other and further relief as the Court deems just and proper.

Dated: May 28 2019



ANGELA L. RAFOTH
 IRENE V. FITZGERALD
 LITTLER MENDELSON, P.C.
 Attorneys for Defendant

FIRMWIDE:164526993.1 054993.1110

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 5200 North Palm Avenue, Suite 302, Fresno, California 93704.2225. On May 28, 2019, I served the within document(s):

DEFENDANT L'OREAL USA S/D, INC.'S ANSWER TO SECOND AMENDED CLASS ACTION COMPLAINT

By personal service. I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses below and (*specify one*):

deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at: **Fresno, California.**

By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)

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By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

By electronic service. Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed below.

Norman B. Blumenthal, Esq. Counsel for Plaintiffs
Kyle R. Nordrehaug, Esq.
Aparajit Bhowmik, Esq.
BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858.551-1223
Fax: 858.551.1232
Email: norm@bamlawca.com
Email: kyle@bamlawca.com
Email: aj@bamlawlj.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 28, 2019, at Fresno, California.



Jennifer A. Drudge

Firmwide: 154672767.1 054993.1110

EXHIBIT “E”

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

E-FILED

3/9/2018

FRESNO COUNTY SUPERIOR COURT
By: R Garcia, Deputy

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
L'OREAL USA S/D, INC., a Corporation; and Does 1 through 50
Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
ANGELA CONTI and JUSTINE MORA, individuals, on behalf of
themselves, and on behalf of all persons similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
B. F. Sisk Courthouse
1130 O Street, Fresno, CA 93721

CASE NUMBER: 18CECG00816
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Norman B. Blumenthal (Bar # 68687)
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara, La Jolla, CA 92037

Fax No.: (858) 551-1232
Phone No.: (858) 551-1223

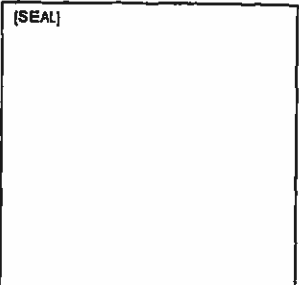
DATE:
(Fecha) 3/9/2018

Clerk, by
(Secretario) R Garcia

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant,
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): L'OREAL USA S/D, I NC.

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date): 4/12/18

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Norman B. Blumenthal (Bar # 68687) Blumenthal Nordrehaug Bhowmik De Blouw LLP 2255 Calle Clara La Jolla, CA 92037 TELEPHONE NO.: (858) 551-1223 FAX NO.: (858) 551-1232 ATTORNEY FOR (Name): Plaintiffs Angela Conti and Justine Mora	FOR COURT USE ONLY E-FILED 3/6/2018 2:30 PM FRESNO COUNTY SUPERIOR COURT By: R Garcia, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO STREET ADDRESS: 1130 O Street MAILING ADDRESS: 1130 O Street CITY AND ZIP CODE: Fresno 93721 BRANCH NAME: B.F. Sisk Courthouse	CASE NAME: ANGELA CONTI and JUSTINE MORA v. L'OREAL USA S/D, INC.
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: 18CECG00816 JUDGE: DEPT:	Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DP/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/W/D (23) Non-P/DP/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): SIX (6)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 6, 2018
 Norman B. Blumenthal
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

<p>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO Civil Unlimited Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-1900</p>	<p>FOR COURT USE ONLY</p> <p>Filed by Court</p>
<p>TITLE OF CASE:</p> <p>Angela Confl vs L'Oreal USA S/D Inc. // COMPLEX/CLASS ACTION</p>	
<p>NOTICE OF CASE MANAGEMENT CONFERENCE AND ASSIGNMENT OF JUDGE FOR ALL PURPOSES</p>	<p>CASE NUMBER: 18CECG00816</p>

To All Parties and their Attorneys of Record:

<p>This case has been assigned to Judge Jeffrey Hamilton for all purposes. All future hearings will be scheduled before this assigned judge.</p>
--

You are required to appear at a Case Management Conference on **July 10, 2018 at 3:30 p.m.** in **Department 402** of the court located at **1130 "O" Street, Fresno, California.**

You must comply with the requirements set forth in Fresno Superior Court Local Rule Chapter 2.

Failure to appear at the conference may result in imposition of sanctions, waiver of jury trial, or other adverse consequences.

Defendants: Appearance at the Case Management Conference does not excuse you from having to file your response in proper legal form within 30 days after the Summons is served on you. You could lose the case if you do not file your response on time. If you do not know an attorney, and do not have one, you may call an attorney referral service or a legal aide office (listed in the phone book).

DECLARATION

I declare under penalty of perjury under the laws of the State of California that I gave a copy of the **Notice of Case Management and Assignment of Judge for All Purposes** to the person who presented this case for filing.

Date: **March 14, 2018**

Clerk, by _____



R. Garcia

, Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited	Entered by:
TITLE OF CASE: Angela Conti vs. L'Oreal USA S/D Inc. // COMPLEX/CLASS ACTION	
LAW AND MOTION MINUTE ORDER	Case Number: 18CECG00816

Hearing Date: **April 4, 2019** Hearing Type: **Case Management Conference**
 Department: **501** Judge/Temp. Judge: **Hamilton, Jeffrey Y.**
 Court Clerk: **Whipple, Layla** Reporter/Tape: **N/R**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel:	Counsel:

Off Calendar

Continued to 7/11/19 at 3:00 p.m. Dept. 501 for Case Management Conference.

- Submitted on points and authorities with/without argument. Matter is argued and submitted.
- Upon filing of points and authorities.
- Motion is granted in part and denied in part. Motion is denied with/without prejudice.
- Taken under advisement
- Demurrer overruled sustained with ___ days to answer amend
- Tentative ruling becomes the order of the court. No further order is necessary.
- Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.
- Service by the clerk will constitute notice of the order.
- See attached copy of the Tentative Ruling.
- Judgment debtor ___ sworn and examined.
- Judgment debtor ___ failed to appear.
 Bench warrant issued in the amount of \$ ___

JUDGMENT:

- Money damages Default Other ___ entered in the amount of:
 Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
- Claim of exemption granted denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

- Money held by levying officer to be released to judgment creditor. returned to judgment debtor.
- \$___ to be released to judgment creditor and balance returned to judgment debtor.
- Levying Officer, County of ___, notified. Writ to issue
- Notice to be filed within 15 days. Restitution of Premises
- Other: ___

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	FOR COURT USE ONLY
TITLE OF CASE: Angela Conti vs.L'Oreal USA S/D Inc. // COMPLEX/CLASS ACTION	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 18CECG00816

I certify that I am not a party to this cause and that a true copy of the:
 [Minute Order]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 04/05/2019

Clerk, by *L. Whipple*, Deputy
 L. Whipple

Norman B Blumenthal
 Blumenthal, Nordrehaug & Bhowm
 2255 Calle Clara
 La Jolla, CA 92037

Angela J Rafoth ✓
 Littler Menderson, P.C.
 333 Bush Street, 34th Fl
 San Francisco, CA 94104

Irene V. Fitzgerald
 Littler Mendelson, PC
 5200 North Palm Ave
 Suite 302
 Fresno, CA 93704

Clerk's Certificate of Mailing Additional Address Page Attached

EXHIBIT “F”

1 ANGELA J. RAFOTH, Bar No. 241966
LITTLER MENDELSON, P.C.
2 333 Bush Street, 34th Floor
San Francisco, CA 94104
3 Telephone: 415.433.1940
Email: ARafoth@littler.com

4 IRENE V. FITZGERALD, Bar No. 266949
LITTLER MENDELSON, P.C.
5 5200 North Palm Avenue, Suite 302
6 Fresno, CA 93704.2225
Telephone: 559.244.7500
7 Email: Ifitzgerald@littler.com

8 Attorneys for Defendant, L'OREAL USA S/D, INC.

9
10 SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

11 ANGELA CONTI and JUSTINE MORA,
12 individuals, on behalf of themselves, and
13 on behalf of all persons similarly situated,

14 Plaintiffs,

15 v.

16 L'OREAL USA S/D, INC., a Corporation;
and DOES 1 through 50, inclusive,

17 Defendant.

Case No. 18CECG00816

**NOTICE TO PLAINTIFF OF REMOVAL OF
CIVIL ACTION TO FEDERAL COURT**

ASSIGNED FOR ALL PURPOSES TO JUDGE
JEFFREY HAMILTON

Second Amended Complaint filed: April 30,
2019

Trial Date: TBD

18
19 TO PLAINTIFF AND HER COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE THAT on May 29, 2019, Defendant L'OREAL USA S/D,
21 INC. ("Defendant"), filed a Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1441 and 1446 in the
22 United States District Court for the Eastern District of California.

23 A true and correct copy of Defendant's Notice of Removal is attached hereto as

24 Exhibit 1.


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Dated: May 29, 2019



ANGELA J. RAFOTH
IRENE V. FITZGERALD
LITTLER MENDELSON, P.C.
Attorneys for Defendant
L'OREAL USA S/D, INC.

FIRMWIDE:164575387.1 054993.1110

EXHIBIT “G”

1 ANGELA J. RAFOTH, Bar No. 241966
LITTLER MENDELSON, P.C.
2 333 Bush Street, 34th Floor
San Francisco, CA 94104
3 Telephone: 415.433.1940
Email: ARafoth@littler.com

4 IRENE V. FITZGERALD, Bar No. 266949
LITTLER MENDELSON, P.C.
5 5200 North Palm Avenue, Suite 302
6 Fresno, CA 93704.2225
Telephone: 559.244.7500
7 Email: Ifitzgerald@littler.com

8 Attorneys for Defendant, L'OREAL USA S/D, INC.

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF FRESNO

12 ANGELA CONTI and JUSTINE MORA,
13 individuals, on behalf of themselves, and
on behalf of all persons similarly situated,

14 Plaintiffs,

15 v.

16 L'OREAL USA S/D, INC., a Corporation;
and DOES 1 through 50, inclusive,

17 Defendant.

Case No. 18CECG00816

**NOTICE TO STATE COURT OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT**

ASSIGNED FOR ALL PURPOSES TO JUDGE
JEFFREY HAMILTON

Second Amended Complaint filed: April 30,
2019

Trial Date: TBD

19 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

20 PLEASE TAKE NOTICE that on May 29, 2019, the above-captioned matter was
21 removed from the Superior Court of the State of California, County of Fresno, where it was
22 previously pending, to the United States District Court for the Eastern District of California,
23 pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. A copy of the Notice of Removal filed by
24 Defendant L'OREAL USA S/D, INC., a Corporation, is attached as Exhibit 1.


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1 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446(d), the
2 filing of a Notice of Removal in the United States District Court, together with the filing of a copy of
3 a Notice of Filing Notice of Removal with this Court, effects the removal of this action, and this
4 Court may proceed no further unless and until the case is remanded.

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6 Dated: May 29, 2019

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9 _____
10 ANGELA J. RAFOTH
11 IRENE V. FITZGERALD
12 LITTLER MENDELSON, P.C.
13 Attorneys for Defendant
14 L'OREAL USA S/D, INC.

15 FIRMWIDE:164556240.1 054993.1110
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 ANGELA CONTI and JUSTINE MORA, individuals, on behalf of themselves, and on behalf of all persons similarly situated,

(b) County of Residence of First Listed Plaintiff _____
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Norman B. Blumenthal, Bar No. 068687
 BLUMENTHAL NORDREHAUGH BHOWMIK DE BLOUW LLP
 2255 Calle Clara
 La Jolla, CA 92037
 Tel: 858.551.1223

DEFENDANTS
 L'OREAL USA S/D, INC., a Corporation; and DOES 1 through 50, inclusive,

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
 Angela J. Rafoth, Bar No. 241966
 LITTLER MENDELSON, P.C.
 333 Bush Street, 34th Floor
 San Francisco, CA 94104
 Tel: 415.433.1940

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

Click here for: Nature of Suit Code Descriptions

IV. NATURE OF SUIT (Place an "X" in One Box Only)		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
CONTRACT	TORTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
REAL PROPERTY	CIVIL RIGHTS	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 29 U.S.C. §§ 201, 207, and 216

Brief description of cause:
 Amongst other wage and hour causes of action, Plaintiff asserts claims for unpaid overtime under the FLSA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: May 21, 2019

SIGNATURE OF ATTORNEY OF RECORD: _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ex-Employees Hit L'Oreal with Class Action Over Allegedly Unpaid Wages](#)
