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**ELECTRONICALLY
FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

Nov 26 2008

ALAN CARLSON, Clerk of the Court
by C. Cepeda

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ORANGE**

12 JOLYAN TRUJILLO, on behalf of
herself, and on behalf of all persons
13 similarly situated,

14 Plaintiff,

15 vs.

16 LIVHOME, INC.; and, Does 1 to 10,

17 Defendants.
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CASE No. **30-2008-00100372-CU-BT-CXC**

**FIRST AMENDED CLASS AND
COLLECTIVE 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 ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 4. FAILURE TO PROVIDE MEAL AND REST PERIODS IN VIOLATION OF CAL. LAB. CODE § 226.7 AND 512;
 5. FAILURE TO PAY COMPENSATION IN VIOLATION OF 29 U.S.C. § 201, *et seq.*;
 6. LABOR CODE PRIVATE ATTORNEY GENERAL ACT [Labor Code § 2698]
- DEMAND FOR A JURY TRIAL

Judge: Hon. Stephen J. Sundvold
Dept: CX-105

Action Filed: September 15, 2008
Trial Date: TBD

1 Plaintiff Jolyan Trujillo, alleges on information and belief, except for her own acts and
2 knowledge, the following:

3 **THE PARTIES**

4 1. Defendant LivHome, Inc., (hereinafter referred to as “LivHOME” or
5 “DEFENDANTS”), is a Delaware corporation. LivHome currently has twenty-one (21) branches in
6 California, Illinois, Minnesota and Texas, with plans to open additional offices in major markets
7 across the country.

8 2. LivHome conducted and continues to conduct substantial and regular business
9 throughout California and also is an enterprise that affects commerce by engaging in the enterprise
10 of employment of persons in domestic service in households and by regularly and recurrently
11 receiving or transmitting interstate communications.

12 3. LivHome is the nation's largest professionally led at-home service provider for
13 senior citizens. Formed in 1999, LivHome provides at-home general housekeeping services, with
14 the objective of enabling seniors to continue living in their own homes for as long as possible.
15 These services are dependent upon the work performed by the Caregivers employed by Livhome.

16 4. The typical services that are provided by the Caregivers to the clients are cooking
17 and serving meals, performance of errands, home maintenance, housekeeping, mail organization,
18 transportation, making appointments for the client, pet care, home deliveries, laundry, bathing,
19 showering, grooming, dressing, toileting, exercising, physical therapy, ambulation, and medication
20 reminders. As a result, the Caregivers essentially take care of every domestic need of the client.

21 5. Plaintiff Jolyan Trujillo (“PLAINTIFF”) was first employed by AngelCare Services
22 as a “Caregiver” in October of 2007. In January of 2008, AngelCare Services was acquired by
23 LivHome, for whom PLAINTIFF has since been working as a Caregiver/Elder Care Associate (a
24 “Caregiver”). PLAINTIFF currently works for LivHome as a Caregiver.

25 6. The work schedule for PLAINTIFF is set by the branch office. As a matter of
26 company policy and practice, LivHome requires PLAINTIFF to always arrive at the client’s home
27 before the start of her shift. Once at the client’s residence, PLAINTIFF is required to perform
28 general housekeeping duties to ensure that the client’s home is kept clean, orderly and safe.

1 7. PLAINTIFF is paid \$10.50 per hour. Her time spent working is tracked by the
2 Santrax time recording system, the form of which is attached hereto as Exhibit #1 and incorporated
3 by this reference herein. This system clocks PLAINTIFF in and out only after PLAINTIFF has
4 called and logged into the telephonic system. To be used, this system requires PLAINTIFF to
5 follow specific prompts in order to log-in and log-out. The log-out cannot be completed without
6 using prompt 57, which states that “less than 20% of shift was spent on light housekeeping.” There
7 is no prompt for spending more than 20% of shift-time on light housekeeping and prompt 57 is a
8 “Required Input” to complete the form.

9 8. On a daily and weekly basis, however, substantially more than twenty percent (20%)
10 of the PLAINTIFF’S working time was spent performing general housekeeping duties as a
11 domestic servant, separate from assisting the client as a personal attendant and without the
12 assistance of the client in that PLAINTIFF was required to, without the participation of the client,
13 prepare meals and perform general housekeeping duties. These duties include and included, but are
14 not limited to the responsibilities to: (a) cook breakfast, lunch and/or dinner; (b) run errands, which
15 includes grocery shopping and picking up prescriptions; (c) perform homemaking, which includes
16 laundry/washing/drying/folding; (d) clean the restroom, which includes the toilet, sink,
17 bathtub/shower, emptying of the trash, and sweeping/mopping the floor; (e) clean the kitchen,
18 which includes cleaning the sink, washing the dishes, wiping the counter, wiping the stove top,
19 wiping the refrigerator, cleaning the inside of the microwave, loading the dishwasher, emptying the
20 dishwasher, sweep/mopping the floor, and emptying the trash; (f) clean the living area, which
21 includes vacuuming, dusting, changing bed linens, and wiping mirrors; and (g) pet care.

22 9. PLAINTIFF performed this manual labor without the assistance of the client,
23 without taking meal or rest breaks, and pursuant to a schedule that mandated this manual labor to be
24 performed during workdays lasting more than eight hours. PLAINTIFF is paid for this work on an
25 hourly basis at the rate of \$10.50 per hour. Although PLAINTIFF works more than eight (8) in one
26 day, and more than forty (40) in one week, LivHOME does not pay PLAINTIFF premium pay for
27 these overtime hours worked because LivHOME had initially classified her as exempt based on job
28 title alone. With respect to the PLAINTIFF, individually, PLAINTIFF contends that she regularly

1 worked overtime without overtime pay during the period October 2007 to April 26, 2008 and the
2 period May 2, 2008 to the present. In this lawsuit, PLAINTIFF does not seek to recover wages or
3 overtime for the period April 27, 2008 through May 1, 2008.

4 10. PLAINTIFF'S performance of general housekeeping services was and is on a daily
5 and weekly basis comprised of more than twenty percent (20%) of her time worked, thus rendering
6 her ineligible for the exemption from overtime under the California Wage Order or the Fair Labor
7 Standards Act. In order to avoid determining the actual amount of time each day PLAINTIFF
8 performs general housekeeping services, LivHome does not allow PLAINTIFF to indicate the
9 actual amount of time she spent performing general housekeeping duties on the Santrax time
10 system. Although more than 20% of the time worked by PLAINTIFF was, in fact, spent
11 performing comprehensive housekeeping duties, DEFENDANTS created an unlawful, unfair, and
12 deceptive method of subterfuge to systematically deprive the PLAINTIFF of the overtime wages to
13 which she is and was owed as a non-exempt, domestic servant. To accomplish this subterfuge,
14 DEFENDANTS required the PLAINTIFF to follow the instructions set forth in Exhibit #1. The
15 instructions dictated the procedure by which the PLAINTIFF was required to complete a daily,
16 telephonic data entry system in order to clock in and out and thereby be paid for her daily work.
17 For example, PLAINTIFF was allowed to choose, by the push of a button on a telephone, (a)
18 whether or not she suffered an injury during the shift [prompt 50 or 53], (b) whether or not the
19 client suffered an injury during the shift [prompt 51 or 54], and (c) whether or any changes to the
20 client's physical condition occurred during the shift [prompt 52 or 55]. PLAINTIFF, however, was
21 given no choice but to declare that less than twenty percent (20%) of her time was spent performing
22 "light" housekeeping duties as a domestic servant (prompt 57). This instruction was given by
23 DEFENDANTS, in spite of the fact that DEFENDANTS knew or should have known that
24 PLAINTIFF regularly spends more than twenty percent (20%) of her working time performing
25 *grueling* housekeeping duties, without the assistance of the client, as a domestic servant. In an
26 utterly disgraceful attempt to require the PLAINTIFF to mischaracterize the primary job duties she
27 performs on a daily basis to be paid, DEFENDANTS instituted this unfair, unlawful, and deceptive
28 prompt system that only allowed for one response as to the percentage of time spent performing

1 housekeeping, rather than two responses as allowed with other prompts.

2 11. There are more than 100 individuals in the CALIFORNIA CLASS and the amount in
3 controversy in this complaint exceeds the sum or value of \$ 5,000,000.

4 12. The Defendants named in this Complaint, and as Does 1 through 10, inclusive,
5 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the
6 other Defendant and each Defendant was acting within the course of scope of his, her or its
7 authority as the agent, servant and/or employee of each of the other Defendant. Consequently, all
8 the Defendants named herein (the "DEFENDANTS") are jointly and severally liable to the
9 PLAINTIFF and the other members of the CALIFORNIA CLASS, for the losses sustained as a
10 proximate result of DEFENDANTS' conduct as herein alleged.

11
12 **THE CONDUCT**

13 13. PLAINTIFF and the other Caregivers were and are employed as working members
14 on the production side of DEFENDANTS' business. The primary job duties of PLAINTIFF and
15 other Caregivers were and are to perform, by manual labor, general housekeeping duties without the
16 assistance of the client more than 20% of their time on a weekly basis. As a result, PLAINTIFF and
17 the other Caregivers were not and currently are not primarily involved in providing companionship
18 services. Instead, PLAINTIFF and the other Caregivers were and currently are primarily involved
19 in providing day to day, routine, and general, domestic household work. This work was and still is
20 executed primarily by the performance of manual labor within a defined skill set, involving meal
21 preparation, bed making, washing of clothes, and other general housekeeping services as outlined in
22 Exhibit #1. Physical demands of the position include standing, sitting, walking, bending, lifting,
23 scrubbing, gardening, moving furniture, and intensive cleaning.

24 14. DEFENDANT'S unlawful, unfair, and deceptive practice time recording system
25 cheats the PLAINTIFF and the other members of the CALIFORNIA CLASS out of their lawful
26 wages.

27 15. The DEFENDANTS' require PLAINTIFF and the members of the CALIFORNIA
28 CLASS to log into the Santrax time system in a way that deceptively results in a uniform

1 classification of PLAINTIFF and the members of the CALIFORNIA CLASS as exempt based on
2 job title alone. This classification was made based on job title alone, rather than on the services
3 performed by PLAINTIFF and the other members of the CALIFORNIA CLASS, because LivHome
4 had in place and still has in place a policy, practice and procedure that fails to determine whether
5 the general housekeeping services that are performed by the Caregivers exceed 20% of the overall
6 work performed. As shown by Exhibit #1, attached hereto, despite the substantial amounts of time
7 spent by PLAINTIFF and the members of the CLASS performing arduous and comprehensive
8 housekeeping duties, DEFENDANTS mandated that PLAINTIFF and the other members of the
9 CALIFORNIA CLASS declare that “[l]ess than 20% of shift was spent on light housekeeping.”
10 PLAINTIFF and the members of the CALIFORNIA CLASS were and still are required to make this
11 declaration even if more than 20% of their shift was actually spent performing general
12 housekeeping duties. Instead of having in place a prompt in the Santrax system by which the
13 Caregivers had an option to state whether or not more than 20% of their time was spent performing
14 general housekeeping duties, LivHome instituted a procedure that failed and still fails to properly
15 determine the actual ratio of time spent by the Caregivers performing companionship services, as
16 compared to general housekeeping services. As a result, the classification of PLAINTIFF and each
17 and every member of the CALIFORNIA CLASS as exempt is based on job title alone and not on
18 the actual services that were provided by the PLAINTIFF and the members of the CALIFORNIA
19 CLASS after being hired and placed into a particular household. Thereafter, no reevaluation or
20 reclassification analysis regarding the propriety of the exempt status was performed by LivHome
21 for PLAINTIFF or for any other member of the CALIFORNIA CLASS because the company’s
22 business model was and still is to classify all Caregivers as exempt based on job title alone and not
23 on actual work performed. As a result, PLAINTIFF and the members of the CALIFORNIA CLASS
24 were not fully compensated for hours of overtime work as required by law in excess of eight (8)
25 hours a day, forty (40) hours a week, or for hours worked on the seventh (7th) consecutive day of a
26 workweek.

27 16. Plaintiff Jolyan Trujilo (“PLAINTIFF”) brings this class action on behalf of
28 herself and a California class consisting of all individuals who are or previously were employed by

1 Defendant LivHome (hereinafter referred to as “DEFENDANTS”) in a staff position as a Caregiver,
2 or in any other similarly situated position (the “Caregivers”) (the “CALIFORNIA CLASS” or
3 “CLASS”) during the Class Period. The class period applicable to this CALIFORNIA CLASS is
4 defined as the period beginning four years prior to the filing of this Complaint and ending on the
5 date of as determined by the Court (the “CLASS PERIOD”). As a matter of company policy and
6 practice, DEFENDANTS have unlawfully, unfairly and deceptively classified every Caregiver as
7 exempt based on job title alone, failed to pay the required overtime compensation and otherwise
8 failed to comply with all labor laws with respect to these Caregivers.

9 17. Individuals in these Caregiver positions are and were employees who are entitled to
10 regular, and overtime compensation and prompt payment of amounts that the employer owes an
11 employee when the employee quits or is terminated, and other compensation and working
12 conditions that are prescribed by law. Although DEFENDANTS require their employees
13 employed as Caregivers, and other similarly situated positions, to work more than forty (40) hours a
14 week, eight (8) hours in a workday, and /or on the seventh (7th) day of a workweek, as a matter of
15 company policy and practice, DEFENDANTS consistently and uniformly failed and still fail to
16 implement a practice and procedure that accurately determines whether the correct overtime
17 compensation is paid to these Caregivers as the law requires. The PLAINTIFF and known
18 members of the CALIFORNIA CLASS currently work or previously worked in California at times
19 during the CLASS PERIOD for DEFENDANTS and DEFENDANTS’ practices and procedures are
20 and were common throughout California at all times during the CLASS PERIOD.

21 18. In this action, PLAINTIFF, on behalf of herself and the CALIFORNIA CLASS,
22 seeks to recover all the money that DEFENDANTS were required by law to pay, but failed to pay,
23 to PLAINTIFF and all other CALIFORNIA CLASS members. PLAINTIFF also seeks penalties
24 and all other relief available to her and other similarly situated employees under California law.
25 PLAINTIFF also seeks declaratory relief finding that the employment practices and policies of the
26 DEFENDANTS violate California law and injunctive relief to enjoin the DEFENDANT from
27 continuing to engage in such employment practices.

28 19. PLAINTIFF and all members of the CALIFORNIA CLASS are and were uniformly

1 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
2 DEFENDANTS failed to take the proper steps to determine whether PLAINTIFF, and the other
3 members of the similarly-situated CALIFORNIA CLASS, were properly classified under Industrial
4 Welfare Commission Wage Order 15-2001 and Cal. Lab. Code §§ 510 *et seq.* and Section 13(a)(5)
5 of the Fair Labor Standards Act (the “FLSA”) as exempt from applicable federal and state labor
6 laws. Under both the FLSA and California Labor Law, these employees may only be classified as
7 exempt if the combined general housekeeping duties performed by the Caregiver do not exceed
8 20% of the weekly working time spent by the Caregiver. Since DEFENDANTS affirmatively and
9 wilfully had in place a business policy, practice and procedure which failed to allow for an accurate
10 determination of whether exempting PLAINTIFF and the members of the CALIFORNIA CLASS
11 complied with either the FLSA or the California Labor Laws, DEFENDANTS’ practices violated
12 and continue to violate the law. As a result of this policy and practice, DEFENDANTS failed and
13 still fail to pay overtime in accordance with applicable law.

14 20. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
15 CLASS members, DEFENDANTS committed acts of unfair competition in violation
16 of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (the “UCL”), by
17 engaging in a company-wide policy and procedure which failed to correctly determine whether the
18 PLAINTIFF and the CALIFORNIA CLASS of similarly situated Caregivers were properly
19 classified as exempt. The proper classification of these employees is the DEFENDANTS’ burden
20 under both the FLSA and the California Labor Code. As a result of DEFENDANTS’ willful
21 blindness and intentional disregard of the obligation to meet this burden, DEFENDANTS failed to
22 properly calculate and/or pay all required overtime compensation for work performed by the
23 members of the CALIFORNIA CLASS and violated the FLSA and the California Labor Code and
24 regulations promulgated thereunder as herein alleged.

25 21. PLAINTIFF and the members of the CALIFORNIA CLASS have no plain, speedy
26 or adequate remedy at law and will suffer irreparable injury if DEFENDANTS are permitted to
27 continue to engage in the unlawful acts and practices herein alleged. The illegal conduct alleged
28 herein is continuing and to prevent future injury and losses, and to avoid a multiplicity of lawsuits,

1 PLAINTIFF is entitled to an injunction and other equitable relief, on behalf of herself and the
2 CLASS, to prevent and enjoin such practices. PLAINTIFF therefore requests a preliminary and/or
3 permanent injunction as the DEFENDANTS provides no indication that DEFENDANTS will not
4 continue such wrongful activity in the future, along with restitution, penalties, interest,
5 compensation and other equitable relief as provided by law.

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8 **THE CALIFORNIA CLASS**

9 22. Plaintiff Jolyan Trujillo (“PLAINTIFF”) brings this class action on behalf of
10 herself and all individuals who are or previously were employed by DEFENDANT as Caregivers
11 and other similarly situated positions in California during the period four years prior to the filing of
12 this Complaint and ending on the date as determined by the Court (“CALIFORNIA CLASS
13 PERIOD” or “CLASS PERIOD”), who were classified by Defendant as exempt, and who have been
14 or may be subject to the challenged exemption classification policies and practices used by
15 Defendant (the “CALIFORNIA CLASS”). To the extent equitable tolling operates to toll claims by
16 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
17 accordingly.

18 23. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in
19 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
20 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
21 wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully, and deceptively failed
22 to institute a practice to ensure that the employees employed in a position as a Caregiver properly
23 were classified as exempt from the requirements of California Labor Code §§ 510, *et seq.*

24 24. DEFENDANTS have the burden of proof that each and every employee is properly
25 classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.* The
26 DEFENDANTS, however, as a matter of uniform and systematic policy and procedure failed to
27 have in place during the CALIFORNIA CLASS PERIOD and still fail to have in place a policy or
28 practice to make any individual determination of exemption for any California Class Members so as

1 to satisfy their burden. Rather, the DEFENDANTS' uniform policy and practice in place at all
2 times during the CALIFORNIA CLASS PERIOD and currently in place is to systematically
3 classify each and every California Class Member as exempt from the requirements of the California
4 Labor Code §§ 510, *et seq.*, based on job title alone. This common business practice applicable to
5 each and every California Class Member can be adjudicated on a classwide basis as unlawful,
6 unfair, and/or deceptive under Cal. Business & Professions Code §17200, *et seq.* (the "UCL") as
7 causation, damages, and reliance are not elements of this claim.

8 25. At no time before, during or after the PLAINTIFF'S employment with LivHome was
9 any Caregiver reclassified as non-exempt from the applicable requirements of California Labor
10 Code §§ 510, *et seq.* after each California Class Member was initially, uniformly, and
11 systematically classified as exempt upon being hired.

12 26. Any individual declarations of any California Class Members offered at this time
13 purporting to indicate that one or more Caregivers may have been properly classified is of no force
14 or affect absent evidence that DEFENDANTS had a uniform system in place to satisfy
15 DEFENDANTS' burden that DEFENDANTS, at all times had in effect a policy and practice to
16 determine whether the California Class Members were being properly classified as exempt pursuant
17 to Cal. Lab. Code §§ 510, *et seq.* Absent proof of such a system, DEFENDANTS' business
18 practice is uniformly unlawful, unfair and/or deceptive under the UCL and may be so adjudicated
19 on a classwide basis. As a result of the UCL violations, the PLAINTIFF and the California Class
20 Members are entitled to have this unfair business practice enjoined and to cause DEFENDANTS to
21 disgorge their ill-gotten gains into a fluid fund and to restitute these funds to the PLAINTIFF and
22 the California Class Members according to proof.

23 27. The CALIFORNIA CLASS, numbering more than 100 members, is so numerous
24 that joinder of all Caregivers is impracticable.

25 28. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS
26 under California law by:

- 27 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §
28 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place

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company policies, practices and procedures that uniformly classified PLAINTIFF and the members of the CALIFORNIA CLASS as exempt based on job title alone;

(b) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code § 17200 *et seq.*, by unlawfully, unfairly, and/or deceptively having in place a company policy, practice and procedure that failed to accurately catalogue, inventory, list or otherwise determine whether the general housekeeping services performed by PLAINTIFF and the members of the CALIFORNIA CLASS exceeded 20% of the overall weekly work performed;

(c) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by having in place a company policy, practice and procedure that failed to reclassify as non-exempt members of the CALIFORNIA CLASS whose general housekeeping services exceeded 20% of the overall weekly work performed;

(d) Violating Cal. Lab. Code §§510, *et seq.* by failing to pay the correct overtime pay to PLAINTIFF and the members of the CALIFORNIA CLASS who were improperly classified as exempt;

(e) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the members of the CALIFORNIA CLASS who were improperly classified as exempt with meal and rest periods;

(f) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the members of the CALIFORNIA CLASS who were improperly classified as exempt with an accurate itemized statement in writing showing the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and,

(f) Violating Cal. Lab. Code § 203 by failing to provide restitution of wages

1 owed to the members of the CALIFORNIA CLASS who were improperly
2 classified as exempt and who have terminated their employment.

3 29. This Class Action meets the statutory prerequisites for the maintenance of a
4 Class Action as set forth in California Code of Civil Procedure § 382 in that:

- 5 (a) The persons who comprise the CALIFORNIA CLASS exceed 100 persons
6 and are therefore so numerous that the joinder of all such persons is
7 impracticable and the disposition of their claims as a class will benefit the
8 parties and the Court;
- 9 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
10 that are raised in this Complaint are common to the CALIFORNIA CLASS
11 will apply uniformly to every member of the CALIFORNIA CLASS;
- 12 (c) The claims of the representative PLAINTIFF are typical of the claims of each
13 member of the CALIFORNIA CLASS. PLAINTIFF, like all other members
14 of the CALIFORNIA CLASS, was initially classified as exempt upon hiring
15 based on job title alone and labored under DEFENDANTS' systematic
16 procedure that failed to analyze the job functions actually performed in order
17 to determine whether the classification was properly made. PLAINTIFF
18 sustained economic injury as a result of DEFENDANTS' employment
19 practices. PLAINTIFF and the members of the CALIFORNIA CLASS were
20 and are similarly or identically harmed by the same unlawful, deceptive,
21 unfair and pervasive pattern of misconduct engaged in by the DEFENDANT
22 by (1) compelling all Caregivers to fill out a timesheet that is not designed to
23 accurately record the percentages of time spent performing general
24 housekeeping work, (2) deceptively advising all Caregivers that they were
25 exempt from overtime wages, and, (3) unfairly failing to pay overtime to
26 employees who were improperly classified as exempt.
- 27 (d) The representative PLAINTIFF will fairly and adequately represent and
28 protect the interest of the CALIFORNIA CLASS, and has retained counsel

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

6 30. In addition to meeting the statutory prerequisites to a Class Action, this action
7 is properly maintained as a Class Action pursuant to California Code of Civil Procedure § 382, in
8 that:

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

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

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

22 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act
23 on grounds generally applicable to the CALIFORNIA CLASS, making
24 appropriate class-wide relief with respect to the CALIFORNIA CLASS as a
25 whole in that the DEFENDANT uniformly classified and treated the
26 Caregivers as exempt and, thereafter, uniformly failed to take proper steps to
27 determine whether the Caregivers were properly classified as exempt, and
28 thereby denied these employees overtime wages as required by law;

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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 Plaintiff seeks declaratory relief holding that the DEFENDANTS' 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 members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

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

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

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

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be

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

23 32. DEFENDANTS maintain records from which the Court can ascertain and
24 identify by job title each of DEFENDANTS' employees who as have been systematically,
25 intentionally and uniformly subjected to DEFENDANTS' corporate policy, practices and
26 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
27 additional job titles of similarly situated employees when they have been identified.
28

THE CALIFORNIA LABOR SUB-CLASS

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2 33. PLAINTIFF further brings the Second, Third, Fourth, and Fifth causes of action on
3 behalf of a subclass which consists of all members of the CALIFORNIA CLASS who were
4 employed by Defendant LivHome during the period three (3) years prior to the filing of the
5 complaint and ending on the date as determined by the Court (CALIFORNIA LABOR SUB-
6 CLASS PERIOD), with overtime hours who were classified by Defendant as exempt, and who
7 performed work in excess of eight (8) hours in one day and/or forty (40) hours in one week and/or
8 hours on the seventh (7th) consecutive day of a workweek and did not receive overtime
9 compensation as required by Labor Code Section 510 and Wage Order 15-2001 (the
10 “CALIFORNIA LABOR SUBCLASS”) pursuant to California Code of Civil Procedure § 382.

11 34. LivHome, as a matter of corporate policy, practice and procedure, and in violation of
12 the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission (“IWC”)
13 Wage Order Requirements intentionally, knowingly, and wilfully, on the basis of job title alone and
14 without regard to the actual overall requirements of the job, systematically classified PLAINTIFF
15 and other members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUBCLASS as
16 exempt from overtime wages and other labor laws in order to avoid the payment of overtime wages
17 by misclassifying their positions as exempt from overtime wages and other labor laws. To the
18 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUBCLASS against
19 LivHome, the CALIFORNIA LABOR SUB-CLASS should be adjusted accordingly.

20 35. To the extent that LivHome has created a number of job levels and/or job titles for
21 Caregivers to create the superficial appearance of a number of unique jobs, when in fact, these jobs
22 are substantially similar, these job titles can be easily grouped together for the purpose of
23 determining whether they are exempt from overtime wages. LivHome has uniformly misclassified
24 these CALIFORNIA CLASS and CALIFORNIA LABOR SUBCLASS members as exempt and
25 denied them overtime wages and other benefits to which non-exempt employees are entitled in
26 order to unfairly cheat the competition and unlawfully profit.

27 36. LivHome maintains records from which the Court can ascertain and identify by job
28 title each of LivHome’ employees who as CALIFORNIA CLASS and CALIFORNIA LABOR

1 SUBCLASS members have been systematically, intentionally and uniformly misclassified as
2 exempt as a matter of DEFENDANTS' corporate policy, practices and procedures. PLAINTIFF
3 will seek leave to amend the complaint to include these additional job titles when they have been
4 identified.

5 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder
6 of all members, which number over 100 Caregivers, is impracticable.

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

- 9 (a) Whether DEFENDANTS unlawfully failed to pay overtime compensation to
10 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
11 California Labor Code and applicable regulations, Cal. Lab. Code §§ 201,
12 202, 203, 226, 510 and California Wage Order 15-2001;
- 13 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are non-
14 exempt employees entitled to overtime compensation for overtime hours
15 worked under the overtime pay requirements of California Law;
- 16 (c) Whether DEFENDANTS' policy and practice of classifying the SUBCLASS
17 members as exempt from overtime compensation and failing to pay the
18 CALIFORNIA LABOR SUB-CLASS members overtime violate applicable
19 provisions of California law;
- 20 (d) Whether DEFENDANTS unlawfully failed to keep and furnish California
21 members with accurate records of hours worked;
- 22 (e) Whether DEFENDANTS' policy and practice of failing to pay members of
23 the CALIFORNIA LABOR SUB-CLASS all wages when due within the
24 time required by law after their employment ended violates California law;
- 25 (f) Whether DEFENDANTS unlawfully failed to provide all required meal and
26 rest periods to the members of the CALIFORNIA LABOR SUB-CLASS;
- 27 (g) Whether DEFENDANTS unlawfully failed to tender full payment and/or
28 restitution of wages owed or in the manner required by California law

1 to the members of the CALIFORNIA LABOR SUBCLASS who have
2 terminated their employment; and,

3 (h) The proper measure of damages and penalties owed to the members of the
4 CALIFORNIA LABOR SUB-CLASS.

5 39. DEFENDANT, as a matter of corporate policy, practice and procedure, classified all
6 Caregivers as exempt from overtime wages and other labor laws. All Caregivers, including the
7 PLAINTIFF, performed the same primary functions and were paid by DEFENDANT according to
8 uniform and systematic company procedures, which, as alleged herein above, failed to correctly pay
9 overtime compensation. This business practice was uniformly applied to each and every member of
10 the CALIFORNIA LABOR SUBCLASS, and therefore, the propriety of this conduct can be
11 adjudicated on a classwide basis.

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

14 (a) Violating Cal. Lab. Code §§ 510, *et seq.* by misclassifying and thereby
15 failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR
16 SUBCLASS the correct overtime pay for a work day longer than eight (8)
17 hours and/or a workweek longer than forty (40) hours, and also for all hours
18 worked on the seventh (7th) day of a workweek for which DEFENDANT is
19 liable pursuant to Cal. Lab. Code § 1194;

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

26 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
27 PLAINTIFF and the members of the CALIFORNIA LABOR CLASS who
28 were improperly classified as exempt with meal and rest periods;

- 1 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR CLASS who were improperly
3 classified as exempt with an accurate itemized statement in writing showing
4 the gross wages earned, the net wages earned, all applicable hourly rates in
5 effect during the pay period and the corresponding number of hours worked
6 at each hourly rate by the employee; and,
- 7 (e) Violating Cal. Lab. Code § 203 by failing to provide restitution of wages
8 owed to members of the CALIFORNIA LABOR SUBCLASS who were
9 improperly classified as exempt and who have terminated their employment.

10 41. This Class Action meets the statutory prerequisites for the maintenance of a
11 Class Action as set forth in California Code of Civil Procedure § 382, in that:

- 12 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS exceed
13 100 individuals and are therefore so numerous that the joinder of all such
14 persons is impracticable and the disposition of their claims as a class will
15 benefit the parties and the Court;
- 16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
17 that are raised in this Complaint are common to the CALIFORNIA LABOR
18 SUBCLASS and will apply uniformly to every member of the
19 CALIFORNIA LABOR SUBCLASS;
- 20 (c) The claims of the representative PLAINTIFF are typical of the claims of each
21 member of the CALIFORNIA LABOR SUBCLASS. PLAINTIFF, like all
22 other members of the CALIFORNIA LABOR SUBCLASS, performed
23 general housekeeping duties greater than 20% of her weekly activities, and
24 was improperly classified as exempt and denied overtime pay as a result of
25 DEFENDANT's systematic classification practices. PLAINTIFF and all
26 other members of the CALIFORNIA LABOR SUBCLASS sustained
27 economic injuries arising from DEFENDANT's violations of the laws of
28 California; and,

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

9 42. In addition to meeting the statutory prerequisites to a Class Action, this action
10 is properly maintained as a Class Action pursuant to California Code of Civil Procedure § 382, in
11 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 SUBCLASS will create the risk of:

16 1) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA LABOR SUBCLASS which would
18 establish incompatible standards of conduct for the parties opposing
19 the CALIFORNIA LABOR SUBCLASS; or,

20 2) Adjudication with respect to individual members of the
21 CALIFORNIA LABOR SUBCLASS 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 SUBCLASS have acted or
26 refused to act on grounds generally applicable to the CALIFORNIA
27 SUBCLASS, making appropriate class-wide relief with respect to the
28 SUBCLASS as a whole in that the DEFENDANTS uniformly classified and

1 treated the Caregivers as exempt and, thereafter, uniformly failed to take
2 proper steps to determine whether the Caregivers were properly classified as
3 exempt, and thereby denied these employees overtime wages as required by
4 law; and,

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

- 11 1) The interests of the members of the CALIFORNIA LABOR
12 SUBCLASS in individually controlling the prosecution or defense of
13 separate actions in that the substantial expense of individual actions
14 will be avoided to recover the relatively small amount of economic
15 losses sustained by the individual CALIFORNIA LABOR
16 SUBCLASS members when compared to the substantial expense and
17 burden of individual prosecution of this litigation;
- 18 2) Class certification will obviate the need for unduly duplicative
19 litigation that would create the risk of:
 - 20 A. Inconsistent or varying adjudications with respect to
21 individual members of the CALIFORNIA LABOR
22 SUBCLASS, which would establish incompatible standards of
23 conduct for the DEFENDANTS; and/or,
 - 24 B. Adjudications with respect to individual members of the
25 CALIFORNIA LABOR SUBCLASS would as a practical
26 matter be dispositive of the interests of the other members not
27 parties to the adjudication or substantially impair or impede
28 their ability to protect their interests;

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- 3) In the context of wage litigation because a substantial number of individual class members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS 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 California Code of Civil Procedure § 382.

43. This Court should permit this action to be maintained as a Class Action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUBCLASS predominate over any question affecting only individual members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUBCLASS because in the context of employment litigation a substantial number of individual Class members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUBCLASS exceed 100 individuals and are therefore so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUBCLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUBCLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and equitable
2 relief for the acts of unfair competition, statutory violations and other
3 improprieties, and in obtaining adequate compensation for the damages and
4 injuries which DEFENDANT's actions have inflicted upon the
5 CALIFORNIA LABOR SUBCLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of the
8 CALIFORNIA LABOR SUBCLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable to
10 the CALIFORNIA LABOR SUBCLASS, thereby making final class-wide
11 relief appropriate with respect to the CALIFORNIA LABOR SUBCLASS as
12 a whole;
- 13 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily
14 ascertainable from the business records of DEFENDANTS. The
15 CALIFORNIA LABOR SUBCLASS consists of those Caregivers with
16 documented overtime who were subjected to the DEFENDANT's overtime
17 miscalculation practices; and,
- 18 (i) Class treatment provides manageable judicial treatment calculated to bring a
19 efficient and rapid conclusion to all litigation of all wage and hour related
20 claims arising out of the conduct of DEFENDANT as to the members of the
21 CALIFORNIA LABOR SUBCLASS.

22
23 **JURISDICTION AND VENUE**

24 44. This Court has jurisdiction over this action pursuant to Cal. Civ. Proc. Code §
25 410.10. The action is brought pursuant to Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781, *et*
26 *seq.* PLAINTIFF brings this action on their own behalf, and on behalf of all persons within the
27 Class as hereinafter defined.

28 45. Venue is proper in this Court pursuant to Cal. Civ. Proc. Code §§ 395 and 395.5

1 because the DEFENDANTS have and at all relevant times maintained their offices in Orange
2 County, California and committed the wrongful conduct against members of the class in Orange
3 County, California.

4
5 **FIRST CAUSE OF ACTION**

6 **For Unlawful Business Practices**

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

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

9 46. PLAINTIFF, and the other members of the CALIFORNIA CLASS,
10 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 45
11 of this Complaint. This cause of action is brought on behalf of PLAINTIFF and the CALIFORNIA
12 CLASS.

13 47. DEFENDANTS are “persons” as that term is defined under Cal. Bus. and Prof. Code
14 § 17021.

15 48. California Business & Professions Code § 17200 *et seq.* (the “UCL”)
16 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
17 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
18 competition as follows:

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

26 California Business & Professions Code § 17203.

27 49. Through the conduct alleged herein, DEFENDANTS have engaged in an
28 unlawful, unfair, and/or deceptive business practice by violating California law, including but not

1 limited to provisions of the Wage Orders, the Regulations implementing the Fair Labor Standards
2 Act as enacted by the Secretary of Labor, the California Labor Code, the Code of Federal
3 Regulations and the California Code of Regulations, the opinions of the Department of Labor
4 Standards Enforcement, California Labor Code § 510, California Labor Code § 226, California
5 Labor Code § 226.7, and California Labor Code § 203 by unfairly violating the public policy of the
6 state of California to take all reasonable steps to properly classify employees as exempt or non-
7 exempt and by deceptively telling the PLAINTIFF and the members of the CALIFORNIA CLASS
8 that they were all exempt when DEFENDANT knew this statement to be untrue, for which this
9 Court should issue declaratory, injunctive and other equitable relief, pursuant to Cal. Bus. & Prof.
10 Code § 17203, as may be necessary to prevent and remedy the conduct held to constitute unfair
11 competition.

12 50. By and through the unlawful, unfair, and/or deceptive business practices
13 described herein, DEFENDANTS have obtained valuable property, money, and services from the
14 PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived them of
15 valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
16 DEFENDANTS so as to allow DEFENDANTS to unfairly compete. Declaratory and injunctive
17 relief is necessary to prevent and remedy this unfair competition, and pecuniary compensation
18 alone would not afford adequate and complete relief.

19 51. All the acts described herein as violations of, among other things, the
20 Cal. Lab. Code, California Code of Regulations, and the Industrial Welfare Commission Wage
21 Orders, are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and
22 unscrupulous, and are likely to deceive employees, and thereby constitute deceptive, unfair and
23 unlawful business practices in violation of Cal. Bus. and Prof. Code § 17200 *et seq.*

24 52. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are further
25 entitled to, and do, seek a declaration that the above described business practices are deceptive
26 unfair and/or unlawful and that an injunctive relief should be issued restraining DEFENDANT from
27 engaging in any of these deceptive, unfair and unlawful business practices in the future.

28 53. PLAINTIFF, and the other members of the CALIFORNIA CLASS, have no

1 plain, speedy, and/or adequate remedy at law that will end the unfair and unlawful business
2 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
3 unabated. As a result of the unfair and unlawful business practices described above, PLAINTIFF,
4 and the other members of the CALIFORNIA CLASS, have suffered and will continue to suffer
5 irreparable harm unless DEFENDANT is restrained from continuing to engage in these unfair and
6 unlawful business practices. In addition, DEFENDANT should be required to disgorge their ill
7 gotten gains into a fluid fund and to make restitution to PLAINTIFF, and the other members of the
8 CALIFORNIA CLASS.

9
10 **SECOND CAUSE OF ACTION**

11 **For Failure To Pay Overtime Compensation**

12 **[Cal. Lab. Code §§ 204, 210, 510, 1194, 1197 and 1198]**

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

14 54. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
15 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 53
16 of this Complaint.

17 55. Cal. Lab. Code § 204 requires employers to pay employees for all hours worked as
18 follows: “all wages... ..earned by any person in any employment are due and payable twice during
19 each calendar month, on days designated in advance by the employer as the regular paydays.” Cal.
20 Lab. Code § 510 further provides that employees in California shall not be employed more than
21 eight (8) hours in any workday or forty (40) hours in a workweek or on a seventh (7th) consecutive
22 workday of a workweek unless they receive additional compensation beyond their regular wages in
23 amounts specified by law.

24 56. Cal. Lab. Code § 551 states that, “Every person employed in any occupation of labor
25 is entitled to one day’s rest therefrom in seven.”

26 57. Cal. Lab. Code § 552 states that, “No employer of labor shall cause his employees to
27 work more than six days in seven.”

28 58. Cal. Lab. Code § 1194 states:

1 Notwithstanding any agreement to work for a lesser wage, any employee receiving
2 less than the legal minimum wage or the legal overtime compensation applicable to
3 the employee is entitled to recover in a civil action the unpaid balance of the full
4 amount of this minimum wage or overtime compensation, including interest thereon,
5 reasonable attorney's fees, and costs of suit.

6 59. Cal. Lab. Code § 1198 provides:

7 The maximum hours of work and the standard conditions of labor fixed by the
8 commission shall be the maximum hours of work and the standard conditions of
9 labor for employees. The employment of any employee for longer hours than those
10 fixed by the order or under conditions of labor prohibited by the order is unlawful.

11 60. DEFENDANTS have intentionally and uniformly designated certain employees as
12 “exempt” from receiving wages for all hours worked and from receiving certain other rights, by
13 their job title and without regard to DEFENDANTS’ realistic expectations, the requirements of the
14 job, and the method of payment made by DEFENDANTS, including PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS who worked on the production side of the
16 DEFENDANTS’ business enterprise. This was done in an illegal attempt to avoid payment of
17 regular and overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial
18 Welfare Commission requirements.

19 61. Pursuant to Wage Order 15-2001, only employees whose primary job duties meet
20 the test of exemption as a(n) “executive,” “administrator,” “professional,” or as a “personal
21 attendant” may be exempt from the provisions of the Wage Order that require the payment of
22 minimum wage and overtime. The primary job duties of the PLAINTIFF and the members of the
23 CALIFORNIA LABOR SUB-CLASS would not qualify these employees to meet any of these
24 exemptions.

25 62. For an employee to be exempt as a bona fide “executive,” all the following criteria
26 must be met and DEFENDANTS have the burden of proving that:

- 27 (a) The employee’s primary duty must be management of the enterprise, or of a
28 customarily recognized department or subdivision; and,

- 1 (b) The employee must customarily and regularly direct the work of at least two (2) or
2 more other employees; and,
- 3 (c) The employee must have the authority to hire and fire, or to command particularly
4 serious attention to his or his recommendations on such actions affecting other
5 employees; and,
- 6 (d) The employee must customarily and regularly exercise discretion and independent
7 judgment; and,
- 8 (e) The employee must be primarily engaged in duties which meet the test of exemption.

9 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they all
10 fail to meet the requirements of being an “executive” within the meaning of Order No. 15-2001.

11 63. For an employee to be exempt as a bona fide “administrator,” all of the following
12 criteria must be met and DEFENDANTS have the burden of proving that:

- 13 (a) The employee must perform office or non-manual work directly related to
14 management policies or general business operation of the employer; and,
- 15 (b) The employee must customarily and regularly exercise discretion and independent
16 judgment; and,
- 17 (c) The employee must regularly and directly assist a proprietor or an exempt
18 administrator; or,
- 19 (d) The employee must perform, under only general supervision, work requiring special
20 training, experience, or knowledge, or,
- 21 (e) The employee must execute special assignments and tasks under only general
22 supervision; and,
- 23 (f) The employee must be primarily engaged in duties which meet the test of exemption.

24 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because they all
25 fail to meet the requirements for being an “administrator” under Order No. 15-2001.

26 64. The Industrial Welfare Commission, ICW Wage Order 15-2001 also sets forth the
27 requirements which must be complied with to place an employee in the “professional” exempt
28 category. For an employee to be exempt as a bona fide professional, all the following criteria must

1 be met:

- 2 (a) The employee must primarily perform work that is intellectual or creative
- 3 and that requires the exercise of discretion and independent judgment.
- 4 (b) The employee must be licensed or certified by the state of California and is
- 5 primarily engaged in the practice of one of the following recognized
- 6 professions: law, medicine, dentistry, optometry, architecture, engineering,
- 7 teaching or accounting.

8 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they all
9 fail to meet the requirements for being an “professional” under Order No. 15-2001.

10 65. PLAINTIFF, and other members of the CALIFORNIA LABOR SUB-CLASS, do
11 not fit the definition of an exempt executive, administrative, or professional employee because:

- 12 (a) These employees performed no managerial or
- 13 administrative (exempt) duties;
- 14 (b) Their work hours are spent performing non-exempt duties, including but not
- 15 limited to performing manual labor;
- 16 (c) They do not have the discretion or independent judgment, in that they must
- 17 follow exacting and comprehensive company-wide policies and procedures which
- 18 dictate every aspect of their work day;
- 19 (d) They do not have the authority to hire and/or fire other personnel; and,
- 20 (e) PLAINTIFF and the other members of the CALIFORNIA LABOR CLASS did
- 21 not earn a monthly salary equivalent to two (2) times the state minimum wage for
- 22 full-time employment.

23 66. PLAINTIFF, and other members of the CALIFORNIA LABOR SUB-CLASS, are
24 not personal attendants within the meaning of Wage Order 15 because a significant amount of
25 work, i.e. more than 20% of their weekly time, is spent performing certain general housekeeping
26 duties without the assistance of the client. The PLAINTIFF and members of the CALIFORNIA
27 LABOR SUBCLASS are required to, without the participation of the client: (a) cook breakfast,
28 lunch and dinner; (b) run errands, which includes grocery shopping and picking up prescriptions;

1 (c) perform homemaking, which includes laundry/washing/drying/folding; (d) clean the restroom,
2 which includes the toilet, sink, bathtub/shower, emptying of the trash, sweeping/mopping the floor;
3 (e) clean the kitchen, which includes cleaning the sink, washing the dishes, wiping the counter,
4 wiping the stove top, wiping the refrigerator, cleaning the inside of the microwave, loading the
5 dishwasher, emptying the dishwasher, sweep/mopping the floor, emptying the trash; (f) clean the
6 living area, which includes vacuuming, dusting, changing bed linens, wiping mirrors; and (g) pet
7 care.

8 67. During the class period, the PLAINTIFF, and other members of the CALIFORNIA
9 LABOR SUBCLASS, worked more than eight (8) hours in a workday and/or forty (40) hours in a
10 work week and/or on the seventh (7th) consecutive day of a workweek. With respect to the
11 PLAINTIFF, individually, PLAINTIFF contends that she regularly worked overtime without
12 overtime pay during the period October 2007 to April 26, 2008 and the period May 2, 2008 to the
13 present. In this lawsuit, PLAINTIFF does not seek to recover wages or overtime for the period
14 April 27, 2008 through May 1, 2008.

15 68. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members
16 of the CALIFORNIA LABOR SUBCLASS, overtime compensation for the hours they worked in
17 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198,
18 *et seq.* and the Wage Order, even though PLAINTIFF, and the other members of the CALIFORNIA
19 LABOR SUB-CLASS, worked regular hours at the private households of DEFENDANTS' clients,
20 and did in fact work overtime hours for DEFENDANTS.

21 69. By virtue of DEFENDANTS' unlawful failure to pay additional compensation to the
22 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for their
23 overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
24 CLASS, have suffered, and will continue to suffer, an economic injury in amounts which are
25 presently unknown to them and which will be ascertained according to proof at trial.

26 70. DEFENDANTS knew or should have known that PLAINTIFF, and the other
27 members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt from wages
28 and DEFENDANTS systematically elected, either through intentional malfeasance or gross

1 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice and
2 procedure.

3 71. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
4 CLASS, request recovery of regular and overtime compensation according to proof, interest,
5 attorney's fees and costs pursuant to Cal. Lab. Code § 1194(a), as well as the assessment of any
6 statutory penalties against DEFENDANTS, in a sum as provided by the Cal. Lab. Code and/or
7 other statutes.

8 72. The members of the CALIFORNIA LABOR SUB-CLASS are owed overtime
9 wages as herein alleged. Many of the CALIFORNIA LABOR SUB-CLASS members have
10 terminated their employment and DEFENDANTS have not tendered payment of all
11 overtime wages owed. DEFENDANTS willfully failed to pay, without abatement or reduction, in
12 accordance with Sections 201, 201.5, 202, and 205.5, all wages of the members of the
13 CALIFORNIA LABOR SUB-CLASS who terminated their employment with DEFENDANTS,
14 and therefore, the wages of such employees continue as a penalty from the due date thereof at the
15 same rate until paid or until an action therefor is commenced; but the wages shall not continue for
16 more than 30 days. Therefore, as provided by Cal Lab. Code § 203, on behalf of the members
17 of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
18 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
19 termination for all employees who terminated employment during the CALIFORNIA
20 LABOR SUB-CLASS PERIOD, plus interest. The waiting time penalties are owed as a
21 matter of law to those members of the CALIFORNIA LABOR SUB-CLASS whose
22 employment has terminated as a result of DEFENDANTS non-payment of overtime wages.

23 73. In performing the acts and practices herein alleged in violation of labor laws and
24 refusing to provide the requisite overtime compensation, the DEFENDANTS acted and continue to
25 act intentionally, oppressively, and maliciously toward the PLAINTIFF, and toward the other
26 members of the CALIFORNIA LABOR SUB-CLASS, with a conscious and utter disregard of their
27 legal rights, or the consequences to them, and with the despicable intent of depriving them of their
28 property and legal rights and otherwise causing them injury in order to increase corporate profits at

1 the expense of PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS.

2
3 **THIRD CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 226]**

6 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)**

7 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
8 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 73
9 of this Complaint. This cause of action is brought on behalf of PLAINTIFF and the CALIFORNIA
10 LABOR SUBCLASS.

11 75. Cal. Labor Code § 226 provides that an employer must furnish employees with
12 an “accurate itemized statement in writing showing:

13 (1) gross wages earned,

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

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

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

21 (5) net wages earned,

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

23 (7) the name of the employee and his or her social security number, except that by January
24 1, 2008, only the last four digits of his or her social security number or an employee
25 identification number other than a social security number may be shown on the itemized
26 statement,

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

28 (9) all applicable hourly rates in effect during the pay period and the corresponding number

1 of hours worked at each hourly rate by the employee.”

2 76. At all times relevant herein, DEFENDANT violated Labor Code § 226, in that
3 DEFENDANT failed to properly and accurately itemize the gross wages earned, the net wages
4 earned, and all applicable hourly rates in effect during the pay period and the corresponding number
5 of hours worked at each hourly rate by the employee.

6 77. DEFENDANT knowingly and intentionally failed to comply with Labor Code
7 § 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
8 SUBCLASS. These damages include, but are not limited to, costs expended calculating the true
9 hours worked and the amount of employment taxes which were not properly paid to state and
10 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the
11 other members of the CALIFORNIA LABOR SUBCLASS may recover liquidated damages of
12 \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in
13 subsequent pay period pursuant to Labor Code § 226, in an amount according to proof at the time of
14 trial (but in no event more than \$4,000.00 for PLAINTIFF and each respective member of the
15 CALIFORNIA LABOR SUBCLASS herein) plus reasonable attorney’s fees and costs pursuant to
16 Labor Code § 226(g).

17

18

FOURTH CAUSE OF ACTION

19

For Failure to Provide Meal and/or Rest Periods

20

[Cal. Lab. Code §§ 226.7 and 512]

21

(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS)

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78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,
reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 77 of
this Complaint.

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79. Cal. Lab. Code § 512 provides, in relevant part: “An employer may not employ an
employee for a work period of more than five hours per day without providing the employee with a
meal period of not less than 30 minutes, except that if the total work period per day of the employee
is no more than six hours, the meal period may be waived by mutual consent of both the employer

1 and employee. An employer may not employ an employee for a work period of more than 10 hours
2 per day without providing the employee with a second meal period of not less than 30 minutes,
3 except that if the total hours worked is no more than 12 hours, the second meal period may be
4 waived by mutual consent of the employer and the employee only if the first meal period was not
5 waived.”

6 80. Section 11 of the Order 15-2001 of the Industrial Wage Commission (the “Wage
7 Order”) provides, in relevant part:

8 Meal Periods:

- 9 (A) No employer shall employ any person for a work period of more than five (5)
10 hours without a meal period of not less than 30 minutes, except that when a
11 work period of not more than six (6) hours will complete the day's work the
12 meal period may be waived by mutual consent of the employer and the
13 employee.
- 14 (B) An employer may not employ an employee for a work period of more than
15 ten (10) hours per day without providing the employee with a second meal
16 period of not less than thirty (30) minutes, except that if the total hours
17 worked is no more than twelve (12) hours, the second meal period may be
18 waived by mutual consent of the employer and the employee only if the first
19 meal period was not waived.
- 20 (C) Unless the employee is relieved of all duty during a 30 minute meal period,
21 the meal period shall be considered an "on duty" meal period and counted as
22 time worked. An "on duty" meal period shall be permitted only when the
23 nature of the work prevents an employee from being relieved of all duty and
24 when by written agreement between the parties an on-the-job paid meal
25 period is agreed to. The written agreement shall state that the employee may,
26 in writing, revoke the agreement at any time.
- 27 (D) If an employer fails to provide an employee a meal period in accordance with
28 the applicable provisions of this order, the employer shall pay the employee

1 one (1) hour of pay at the employee's regular rate of compensation for each
2 workday that the meal period is not provided.

3 81. Section 12 of Order 15-2001 of the Industrial Wage Commission (the “Wage
4 Order”) provides, in relevant part:

5 Rest Periods:

6 (A) Every employer shall authorize and permit all employees to take rest periods,
7 which insofar as practicable shall be in the middle of each work period. The
8 authorized rest period time shall be based on the total hours worked daily at
9 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
10 thereof. However, a rest period need not be authorized for employees whose
11 total daily work time is less than three and one-half (3 1/2) hours. Authorized
12 rest period time shall be counted as hours worked for which there shall be no
13 deduction from wages.

14 (B) If an employer fails to provide an employee a rest period in accordance with
15 the applicable provisions of this Order, the employer shall pay the employee
16 one (1) hour of pay at the employee's regular rate of compensation for each
17 work day that the rest period is not provided.

18 82. Cal. Lab. Code § 226.7 provides:

19 (a) No employer shall require any employee to work during any meal or rest period
20 mandated by an applicable order of the Industrial Welfare Commission.

21 (b) If an employer fails to provide an employee a meal period or rest period in
22 accordance with an applicable order of the Industrial Welfare Commission, the
23 employer shall pay the employee one additional hour of pay at the employee's
24 regular rate of compensation for each work day that the meal or rest period is not
25 provided.

26 83. DEFENDANTS have intentionally and improperly failed to provide all rest and/or
27 meal periods without any work or duties to PLAINTIFF and the other members of the
28 CALIFORNIA LABOR SUBCLASS in accordance with and as required by California law, and by

1 failing to do so, DEFENDANTS violated the provisions of Labor Code 226.7.

2 84. Therefore, PLAINTIFF demands on behalf of herself and the members of the
3 CALIFORNIA LABOR SUBCLASS, one (1) hour of premium pay for each workday in which a
4 rest period was not provided as required by California law, and one (1) hour of premium pay for
5 each workday in which a meal period was not provided as required by California law. PLAINTIFF
6 only seeks to enforce meal and rest break requirements consistent with applicable law and
7 regulations governing meal and rest breaks and seeks to recover all available compensation for
8 meal and rest break violations in accordance with the applicable law and regulations.

9
10 **FIFTH CAUSE OF ACTION**

11 **For Failure to Pay Overtime Compensation**

12 **[FLSA, 29 U.S.C. § 201, *et seq.*]**

13 **(By PLAINTIFF and the COLLECTIVE CLASS)**

14 85. PLAINTIFF, and the other members of the COLLECTIVE CLASS, reallege and
15 incorporate by reference, as though fully set forth herein, paragraphs 1 through 84 of this
16 Complaint.

17 86. PLAINTIFF also brings this lawsuit as a collective action under the Fair Labor and
18 Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”), on behalf of all persons who were, are, or
19 will be employed by DEFENDANTS as Caregivers, or in other substantially similar positions
20 during the period commencing three years prior to the filing of this Complaint and ending on the
21 date as the Court shall determine (the “COLLECTIVE CLASS PERIOD”), who performed work in
22 excess of forty (40) hours in one week and did not receive overtime compensation as required by
23 the FLSA (the “COLLECTIVE CLASS”). To the extent equitable tolling operates to toll claims by
24 the COLLECTIVE CLASS against the DEFENDANTS, the COLLECTIVE CLASS PERIOD
25 should be adjusted accordingly. The COLLECTIVE CLASS includes all such persons, whether or
26 not they were paid by commission, by salary, or by part commission and part salary.

27 87. Questions of law and fact common to the COLLECTIVE CLASS as a whole, but not
28 limited to the following, include:

- 1 a. Whether DEFENDANTS misclassified PLAINTIFF and members of the
2 COLLECTIVE CLASS as exempt from receiving compensation for all hours
3 worked, including federal overtime compensation;
- 4 b. Whether DEFENDANTS failed to adequately compensate the members
5 of the COLLECTIVE CLASS for all hours worked as required by the FLSA,
6 including the time worked through their meal periods;
- 7 c. Whether DEFENDANTS should be enjoined from continuing the practices which
8 violate the FLSA; and,
- 9 d. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

10 88. The Sixth cause of action for the violations of the FLSA may be brought and
11 maintained as an “opt-in” collective action pursuant to Section 16(b) of FLSA, 29 U.S.C. 216(b),
12 for all claims asserted by the representative PLAINTIFF of the COLLECTIVE CLASS because the
13 claims of the PLAINTIFF are similar to the claims of the members of the prospective
14 COLLECTIVE CLASS.

15 89. PLAINTIFF and the COLLECTIVE CLASS are similarly situated,
16 have substantially similar job requirements and pay provisions, and are subject to DEFENDANTS’
17 common and uniform policy and practice of misclassifying their employees, failing to pay for all
18 actual time worked and wages earned, and failing to accurately record all hours worked by these
19 employees in violation of the FLSA and the Regulations implementing the Act as enacted by the
20 Secretary of Labor (the “REGULATIONS”).

21 90. DEFENDANTS are engaged in communication, business, and transmission
22 throughout the United States and are, therefore, engaged in commerce within the meaning of 29
23 U.S.C. § 203(b).

24 91. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful
25 violations of the FLSA.

26 92. The Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, states that an employee must
27 be compensated for all hours worked, including all straight time compensation and overtime
28 compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has concurrent jurisdiction

1 over claims involving the Fair Labor Standards Act pursuant to 29 U.S.C. § 216.

2 93. Section 207(a) of the FLSA provides that:

3 Except as otherwise provided in this section, no employer shall employ any of his
4 employees who in any workweek is engaged in commerce or in the production of
5 goods for commerce, or is employed in an enterprise engaged in commerce or in the
6 production of goods for commerce, for a workweek longer than forty hours unless
7 such employee receives compensation for his employment in excess of the hours
8 above specified at a rate not less than one and one-half times the regular rate at
9 which he is employed.

10 94. Specifically, section 207(l) of the FLSA provides that:

11 No employer shall employ any employee in domestic service in one or more
12 households for a workweek longer than forty hours unless such employee receives
13 compensation for such employment in accordance with subsection (a).

14 95. The terms domestic service is defined by 29 CFR 552.3 as:

15 [S]ervices of a household nature performed by an employee in or about a private
16 home (permanent or temporary) of the person by whom he or she is employed. The
17 term includes employees such as cooks, waiters, butlers, valets, maids,
18 housekeepers, governesses, nurses, janitors, laundresses, caretakers, handymen,
19 gardeners, footmen, grooms, and chauffeurs of automobiles for family use. It also
20 includes babysitters employed on other than a casual basis.

21 96. Section 213(a)(15) of the FLSA provides that the overtime pay requirement does not

22
23 apply to:

24 any employee employed on a casual basis in domestic service employment to
25 provide babysitting services or any employee employed in domestic service
26 employment to provide companionship services for individuals who (because of age
27 or infirmity) are unable to care for themselves (as such terms are defined and
28 delimited by regulations of the Secretary).

1 97. 29 CFR 552.6 provides that the aforementioned exemption from overtime is only
2 applicable if general household work “is incidental, i.e., does not exceed 20 percent of the total
3 weekly hours worked.”

4 98. PLAINTIFF and every other individual employed by DEFENDANTS as a Caregiver
5 or in other similarly situated positions was employed in domestic services in one or more
6 households in which the general household work performed exceeded 20 percent of the total
7 weekly hours worked. PLAINTIFF and the other members of the COLLECTIVE CLASS,
8 therefore, were not properly classified as exempt under section 213(a)(15) of the FLSA. As a
9 result, pursuant to section 207 of the FLSA, PLAINTIFF and every other individual employed by
10 DEFENDANTS as a Caregiver or in other similarly situated positions should have been paid at a
11 rate of not less than one and one-half times the regular rate at which they were employed for all
12 hours worked longer than forty (40) in one workweek.

13 99. DEFENDANTS have willfully engaged in a widespread pattern and practice of
14 violating the provisions of the FLSA, as detailed above, by uniformly designating certain
15 employees as “exempt” employees, by their job title and without regard to DEFENDANTS’
16 realistic expectations and actual overall requirements of the job, including PLAINTIFF and the
17 other members of the COLLECTIVE CLASS who worked on the production side of the
18 DEFENDANTS’ business enterprise. This was done in an illegal attempt to avoid payment of
19 overtime wages and other benefits in violation of the FLSA and Code of Federal Regulations
20 requirements.

21 100. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
22 exempt status of an employee. The exempt or nonexempt status of any particular employee must be
23 determined on the basis of whether the employee’s salary and duties meet the requirements of the
24 regulations in this part.

25 101. The exemptions of the FLSA as listed in section 13(a)(15) do not apply to
26 PLAINTIFF and the other members of the COLLECTIVE CLASS, because their work consists of
27 non-management, manual, and production line labor.

28 102. For an employee to be exempt as a bona fide “executive,” all the

1 following criteria must be met and DEFENDANTS have the burden of proving that:

- 2 (a) The employee’s primary duty must be management of the enterprise, or of a
3 customarily recognized department or subdivision;
- 4 (b) The employee must customarily and regularly direct the work of at least two (2) or
5 more other employees;
- 6 (c) The employee must have the authority to hire and fire, or to command particularly
7 serious attention to his or his recommendations on such actions affecting other
8 employees; and,
- 9 (d) The employee must be primarily engaged in duties which meet the test of exemption.

10 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet the
11 requirements of being an “executive” under section 13 of the FLSA and 29 C.F.R. 541.100.

12 103. For an employee to be exempt as a bona fide “administrator,” all of the
13 following criteria must be met and DEFENDANTS have the burden of proving that:

- 14 (a) The employee must perform office or non-manual work directly related to
15 management or general business operation of the employer or the employer’s
16 customers;
- 17 (b) The employee must customarily and regularly exercise discretion and independent
18 judgment with respect to matters of significance; and,
- 19 (c) The employee must regularly and directly assist a proprietor or an exempt
20 administrator; or,
- 21 (d) The employee must perform under only general supervision, work requiring special
22 training, experience, or knowledge; and,
- 23 (e) The employee must be primarily engaged in duties which meet the test of exemption.

24 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to meet
25 the requirements for being an “administrator” under section 13(a) of the FLSA and 29 C.F.R.
26 541.202. PLAINTIFF and the other members of the COLLECTIVE CLASS perform their
27 primary, day to day duties without the requisite amount of discretion and independent judgment
28 needed to qualify for the administrative exemption. Further, PLAINTIFF and the other members

1 of the COLLECTIVE CLASS were not paid on a salary basis of not less than \$455 per week.

2 104. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other
3 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week and
4 were also required to perform duties that were primarily for the benefit of the employer during meal
5 periods.

6 105. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members
7 of the COLLECTIVE CLASS overtime compensation for the hours they have worked in excess of
8 the maximum hours permissible by law as required by section 7 of the FLSA, even though
9 PLAINTIFF and the other members of the COLLECTIVE CLASS, were regularly required to
10 work, and did in fact work overtime hours.

11 106. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members
12 of the COLLECTIVE CLASS, regular compensation for the hours they have worked, performing
13 duties primarily for the benefit of the employer during meal periods.

14 107. For purposes of the Fair Labor Standards Act, the employment practices of
15 DEFENDANTS were and are uniform throughout California in all respects material to the claims
16 asserted in this Complaint.

17 108. As a result of DEFENDANTS' failure to pay overtime compensation for hours
18 worked, as required by the FLSA, PLAINTIFF and the members of the COLLECTIVE CLASS
19 were damaged in an amount to be proved at trial.

20 109. PLAINTIFF, therefore, demands that she and the members of the COLLECTIVE
21 CLASS be paid overtime compensation as required by the FLSA for every hour of overtime worked
22 in any work week for which they were not compensated, straight wages for all unpaid hours of
23 work worked primarily for the benefit of DEFENDANTS, including those hours worked during
24 meal breaks for which they were not compensated, liquidated damages, plus interest and attorneys'
25 fees as provided by law.

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SIXTH CAUSE OF ACTION

Labor Code Private Attorneys General Act

1 [Cal. Labor Code § 2698]

2 (By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)

3 110. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this
4 reference, as though fully set forth herein, paragraphs 1 through 109 of this Complaint.

5 111. On September 16, 2008 and September 30, 2008, PLAINTIFF gave written notice
6 by certified mail to the Labor and Workforce Development Agency (the "LWDA") and the
7 employer of the specific provisions of this code alleged to have been violated as required by Labor
8 Code § 2699.3. PLAINTIFFS notice to the LWDA complied fully with the requirements of Labor
9 Code § 2699.3 and provided notice of the specific provisions of this code alleged to have been
10 violated as well as the facts and theories which support the alleged violation. DEFENDANTS
11 failed and refused to correct, cure and remedy the identified violations. On October 30, 2008,
12 PLAINTIFF received notice that the LWDA does not intend to investigate PLAINTIFF's
13 allegations. (A true and correct copy of this October 30, 2008 letter from the LWDA is attached
14 hereto as Exhibit #2). As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
15 civil action pursuant to Section 2699 as a matter of right.

16 112. The policies, acts and practices heretofore described were and are an unlawful
17 business act or practice because DEFENDANTS' failure to pay wages, failure to provide rest and
18 meal period breaks, failure to pay wages and compensation for work without rest and meal period
19 breaks and failure to provide accurate wage statements and maintain accurate time records for
20 PLAINTIFF and the other members of the CLASS violates applicable Labor Code sections and
21 gives rise to statutory penalties as a result of such conduct, including but not limited to penalties as
22 provided by Labor Code §§ 221, 226, 226.7, 558, 1174 and 1194, applicable Industrial Welfare
23 Commission Wage Orders. PLAINTIFF, as an aggrieved employee, hereby seeks recovery of civil
24 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of
25 themselves and other current and former employees of DEFENDANTS which comprise the
26 CLASS, against whom one or more of the violations of the Labor Code was committed. In
27 addition, PLAINTIFF, as an aggrieved employee, hereby seeks recovery of civil penalties as
28 prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of the State of

1 California and/or the LWDA, to the fullest extent available under the law.

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PRAYER

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WHEREFOR, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

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1. On behalf of the CALIFORNIA CLASS:

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A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to California Code of Civil Procedure § 382;

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B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

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C) An order requiring DEFENDANTS to provide an accounting of all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASSES; and,

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D) Disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund and imposition of a constructive trust upon such assets of the DEFENDANTS for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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2. On behalf of the CALIFORNIA LABOR SUBCLASS:

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A) That the Court certify the Second, Third, Fourth, and Fifth Causes of Action asserted by the CALIFORNIA LABOR SUBCLASS as a class action pursuant to California Code of Civil Procedure § 382;

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B) Compensatory damages, according to proof at trial, including compensatory damages for both regular and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS, during the applicable CALIFORNIA CLASS PERIODS plus interest thereon at the statutory rate;

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C) One (1) hour of premium pay for each workday in which a rest period was not provided to PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS for each four (4) hours of work during the period commencing on the

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- 1 date that is within four years prior to the filing of this Complaint;
- 2 D) One hour of premium pay for each five (5) hours of work in which a meal period
- 3 was not provided to PLAINTIFF and each member of the CALIFORNIA LABOR
- 4 SUBCLASS;
- 5 E) The wages of all terminated employee from the CALIFORNIA LABOR
- 6 SUBCLASS as a penalty from the due date thereof at the same rate until paid or
- 7 until an action therefor is commenced, for violation of Cal. Lab. Code § 203;
- 8 F) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
- 9 which a violation occurs and one hundred dollars (\$100) per each member of the
- 10 CALIFORNIA LABOR SUBCLASS for each violation in a subsequent pay period,
- 11 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award
- 12 of costs and reasonable attorney's fees for violation of Cal. Lab. Code § 226.

13 3. On behalf of the COLLECTIVE CLASS:

- 14 A) That the Court certify the Sixth Cause of Action asserted by the COLLECTIVE
- 15 CLASS as an opt-in class action under 29 U.S.C. § 216(b);
- 16 B) That the Court declare the rights and duties of the parties consistent with the relief
- 17 sought by Plaintiffs;
- 18 C) Issue a declaratory judgment that Defendant's acts, policies, practices and procedures
- 19 complained of herein violated provisions of the Fair Labor Standards Act;
- 20 D) That Defendants be enjoined from further violations of the Fair Labor Standards
- 21 Act;
- 22 E) That the PLAINTIFF and the members of the COLLECTIVE CLASS recover
- 23 compensatory, damages and an equal amount of liquidated damages as provided
- 24 under the law and in 29 U.S.C. § 216(b).

25 4. On all claims:

- 26 A) An award of interest, including prejudgment interest at the legal rate.
- 27 B) An award of liquidated damages, statutory damages, including reasonable attorneys'
- 28 fees and cost of suit, but only to the extent that such reasonable attorneys' fees and

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costs are recoverable pursuant to Cal. Lab. Code §1194 and 29 U.S.C. § 216(b).
Neither this prayer nor any other allegation or prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for attorneys' fees or costs available under Cal. Lab. Code § 218.5;

C) Such other and further relief as the Court deems just and equitable.

Dated: November 26, 2008

BLUMENTHAL & NORDREHAUG

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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

Dated: November 26, 2008

BLUMENTHAL & NORDREHAUG

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

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