

1 **MATERN LAW GROUP, PC**
 2 Matthew J. Matern (SBN 159798)
 3 Tagore Subramanian (SBN 280126)
 4 Daniel J. Bass (SBN 287466)
 5 1230 Rosecrans Avenue, Suite 200
 6 Manhattan Beach, CA 90266
 7 Tel: (310) 531-1900
 8 Facsimile: (310) 531-1901

9 Attorney for Plaintiff EVERETT KING,
 10 individually, and on behalf of others
 11 similarly situated

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF LOS ANGELES

14 EVERETT KING, an individual, and on behalf
 15 of others similarly situated

16 Plaintiff,

17 vs.

18 RUSS BASSETT CORP., a California
 19 corporation; and DOES 1 through 100,
 20 inclusive.

21 Defendant.

CASE NO.:

COMPLAINT

CLASS ACTION:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Timely Pay All Wages Earned
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Wage Statements
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION:

11. Penalties under the Labor Code Private Attorneys General Act

COLLECTIVE ACTION:

12. Failure to Pay All Wages and Overtime Compensation in Violation of the Fair Labor Standards Act

DEMAND FOR JURY TRIAL

1 PLAINTIFF EVERETT KING (“PLAINTIFF”) an individual, demanding a jury trial, on
2 behalf of himself and other persons similarly situated, hereby alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. The Superior Court of the State of California has jurisdiction in this matter because
5 PLAINTIFF is a resident of the State of California and Defendant RUSS BASSETT CORP., a
6 California corporation (“DEFENDANT”), is qualified to do business in California and regularly
7 conduct business in California.

8 2. Venue is proper in this judicial district and the County of Los Angeles, California
9 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANT in
10 the County of Los Angeles, DEFENDANT maintain offices and facilities and transact business in
11 the County of Los Angeles, and because DEFENDANT’s illegal payroll policies and practices
12 which are the subject of this action were applied, at least in part, to PLAINTIFF, and other
13 persons similarly situated, in the County of Los Angeles.

14 **PLAINTIFF**

15 3. PLAINTIFF is a male resident of the State of California and a former non-exempt
16 employee of DEFENDANT.

17 4. PLAINTIFF, on behalf of himself and other similarly situated current and former
18 non-exempt employees of DEFENDANT in the State of California at any time during the period
19 beginning May 26, 2013 and continuing while this action is pending, brings this class action to
20 recover, among other things, wages and penalties from unpaid wages earned and due, including
21 but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
22 compensation, illegal meal and rest period policies, failure to timely pay employees all wages
23 due, failure to pay all wages due to discharged and quitting employees, failure to indemnify
24 employees for necessary expenditures and/or losses incurred in discharging their duties, failure to
25 provide accurate itemized wage statements, failure to maintain required records, and interest,
26 attorneys’ fees, costs, and expenses.

27 5. PLAINTIFF brings this action on behalf of himself and the following similarly
28 situated class of individuals (“CLASS MEMBERS”): all current and former non-exempt

1 employees of DEFENDANT in the State of California at any time within the period beginning
2 May 26, 2013 and ending at the time this action settles or proceeds to final judgment (the
3 “CLASS PERIOD”). PLAINTIFF reserves the right to name additional class representatives.

4 6. Under the tolling doctrine, which has been adopted by Courts in the State of
5 California, the statutory limitations period for PLAINTIFF and CLASS MEMBERS to bring the
6 claims asserted in this complaint was tolled during the pendency of the actions styled *Alecia*
7 *Ballin v. Russ Bassett Corp., et al*, United States District Court for the Central District of
8 California, Case No. 2:17-cv-01351-PA-KS and *Alecia Ballin v. Russ Bassett Corp., et al*, United
9 States District Court for the Central District of California, Case No. 2:17-cv-03981-PSG-SK in
10 which the courts did not rendered any determination regarding class certification. See, *Falk v.*
11 *Children's Hospital Los Angeles* (2015) 237 Cal.App.4th 1454, 1470.

12 **DEFENDANT**

13 7. PLAINTIFF is informed and believes, and thereon alleges, that RUSS BASSETT
14 CORP. is, and at all times relevant hereto was, a California corporation organized and existing
15 under the laws of the State of California. PLAINTIFF is further informed and believes, and
16 thereon alleges, that RUSS BASSETT CORP. is authorized to conduct business in the State of
17 California, and does conduct business in the State of California. Specifically, RUSS BASSETT
18 CORP. maintains offices and facilities and conducts business in, and engages in illegal payroll
19 practices or policies in, the County of Los Angeles, State of California.

20 8. At all relevant times herein, DEFENDANT and DOES were the joint employers of
21 PLAINTIFF and CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon allege,
22 that at all times material to this complaint DEFENDANT and DOES were the alter egos,
23 divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals,
24 related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors,
25 actual or ostensible, of each other. Each Defendant was completely dominated by his, her or its
26 co-Defendant, and each was the alter ego of the other.

27 9. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed
28 by DEFENDANT under employment agreements that were partly written, partly oral, and partly

1 implied. In perpetrating the acts and omissions alleged herein, DEFENDANT, acted pursuant to,
2 and in furtherance of, their policies and practices of not paying PLAINTIFF and CLASS
3 MEMBERS all wages earned and due, through methods and schemes which include, but are not
4 limited to, failing to pay overtime premiums; failing to provide rest and meal periods; failing to
5 properly maintain records; failing to provide accurate itemized statements for each pay period;
6 failing to properly compensate PLAINTIFF and CLASS MEMBERS for necessary expenditures;
7 and requiring, permitting or suffering the employees to work off the clock, in violation of the
8 California Labor Code and the applicable Welfare Commission (“IWC”) Orders.

9 10. PLAINTIFF is informed and believes, and thereon allege, that each and every one
10 of the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
11 each acting as agents and/or employees, and/or under the direction and control of, each of the
12 other defendants, and that said acts and failures to act were within the course and scope of said
13 agency, employment and/or direction and control.

14 11. As a direct and proximate result of the unlawful actions of DEFENDANT,
15 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
16 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
17 Court.

18 **CLASS ACTION DESIGNATION**

19 12. This action is appropriately suited for a Class Action because:

20 a. The potential class is a significant number. Joinder of all current and
21 former employees individually would be impractical.

22 b. This action involves common questions of law and fact to the potential
23 class because the action focuses on DEFENDANT’s systematic course of illegal payroll practices
24 and policies, which was applied to all non-exempt employees in violation of the Labor Code, the
25 applicable IWC wage order, and the Business and Professions Code which prohibits unfair
26 business practices arising from such violations.

1 c. The claims of PLAINTIFF are typical of the class because DEFENDANT
2 subjected all non-exempt employees to identical violations of the Labor Code, the applicable
3 IWC wage order, and the Business and Professions Code.

4 d. PLAINTIFF is able to fairly and adequately protect the interests of all
5 members of the class because it is in his best interests to prosecute the claims alleged herein to
6 obtain full compensation due to them for all services rendered and hours worked.

7 **FIRST CAUSE OF ACTION**

8 **Failure to Provide Required Meal Periods**

9 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 1-2001, § 11]**

10 **(Against DEFENDANT)**

11 13. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
12 allegations in the preceding paragraphs.

13 14. During the CLASS PERIOD, as part of DEFENDANT’s illegal payroll policies
14 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANT
15 required, permitted or otherwise suffered PLAINTIFF and CLASS MEMBERS to take less than
16 the 30-minute meal period, or to work through them, and have failed to otherwise provide the
17 required meal periods to PLAINTIFF and CLASS MEMBERS pursuant to California Labor Code
18 § 226.7, 512 and IWC Order No. 1-2001, § 11.

19 15. DEFENDANT further violated California Labor Code §§ 226.7 and IWC Wage
20 Order No. 1-2001, § 11 by failing to compensate PLAINTIFF and CLASS MEMBERS who were
21 not provided with a meal period, in accordance with the applicable wage order, one additional
22 hour of compensation at each employee’s regular rate of pay for each workday that a meal period
23 was not provided.

24 16. DEFENDANT further violated California Labor Code §§ 226.7, 510, 1194, 1197,
25 and IWC Wage Order No. 1-2001 by failing to compensate PLAINTIFF and CLASS MEMBERS
26 for all hours worked during their meal periods.

27 17. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
28 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages

1 earned and due, interest, penalties, expenses, and costs of suit.

2 **SECOND CAUSE OF ACTION**

3 **Failure to Provide Required Rest Periods**

4 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 1-2001, § 12]**

5 **(Against DEFENDANT)**

6 18. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
7 allegations in the preceding paragraphs.

8 19. At all times relevant herein, as part of DEFENDANT’s illegal payroll policies and
9 practices to deprive their non-exempt employees all wages earned and due, DEFENDANT failed
10 to provide rest periods to PLAINTIFF and CLASS MEMBERS as required under California
11 Labor Code §§ 226.7 and 512, and IWC Wage Order No. 1-2001, § 12.

12 20. DEFENDANT further violated California Labor Code § 226.7 and IWC Wage
13 Order No. 1-2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who were not
14 provided with a rest period, in accordance with the applicable wage order, one additional hour of
15 compensation at each employee’s regular rate of pay for each workday that a rest period was not
16 provided.

17 21. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
18 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
19 earned and due, interest, penalties, expenses, and costs of suit.

20 **THIRD CAUSE OF ACTION**

21 **Failure to Pay Overtime Wages**

22 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 1-2001, § 3]**

23 **(Against DEFENDANT)**

24 22. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
25 allegations in the preceding paragraphs.

26 23. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 1-
27 2001, § 3, DEFENDANT is required to compensate PLAINTIFF and CLASS MEMBERS for all
28 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours

1 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
2 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
3 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
4 on the seventh consecutive day of work in any workweek.

5 24. PLAINTIFF and CLASS MEMBERS are current and former non-exempt
6 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage
7 Order No. 1-2001. During the CLASS PERIOD, DEFENDANT failed to compensate
8 PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required under the
9 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:
10 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
11 California Labor Code §§ 510, 1194, and IWC Wage Order No. 1-2001, § 3; requiring, permitting
12 or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring, permitting or
13 suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest breaks but not
14 compensating them for this time and failing to include this time in their hours worked; illegally
15 and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS worked; failing to
16 properly maintain PLAINTIFF’s and CLASS MEMBERS’ records; failing to provide accurate
17 itemized wage statements to PLAINTIFF for each pay period; and other methods to be
18 discovered.

19 25. In violation of California law, DEFENDANT has knowingly and willfully refused
20 to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all wages
21 earned and all hours worked. As a proximate result, PLAINTIFF and CLASS MEMBERS have
22 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such
23 wages, lost interest on such wages, and expenses and attorneys’ fees in seeking to compel
24 DEFENDANT to fully perform their obligations under state law, all to their respective damages
25 in amounts according to proof at time of trial, and within the jurisdiction of this Court.

26 26. DEFENDANT’s conduct described herein violates California Labor Code §§ 510,
27 1194, 1198 and IWC Wage Order No. 1-2001, § 3. Therefore, pursuant to California Labor Code
28 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor

1 Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the
2 unpaid balance of wages owed to them by DEFENDANT, plus interest, penalties, attorneys' fees,
3 expenses, and costs of suit.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Pay Minimum Wages**

6 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 1-2001, § 4]**

7 **(Against DEFENDANT)**

8 27. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
9 allegations in the preceding paragraphs.

10 28. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 1-
11 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
12 worked in a payroll period is unlawful.

13 29. During the CLASS PERIOD, DEFENDANT failed to pay PLAINTIFF and
14 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
15 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,
16 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest
17 breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS
18 worked; failing to properly maintain PLAINTIFF's and CLASS MEMBERS' records; failing to
19 provide accurate itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay
20 period; and other methods to be discovered.

21 30. DEFENDANT's conduct described herein violates California Labor Code §§
22 1194, 1197, and IWC Wage Order No. 1-2001, § 4. As a proximate result of the aforementioned
23 violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
24 proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1,
25 and other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFF and
26 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by
27 DEFENDANT, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

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FIFTH CAUSE OF ACTION

Failure to Pay All Wages Due to Discharged and Quitting Employees

[Cal. Labor Code §§ 201, 202, 203]

(Against DEFENDANT)

31. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

32. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANT is required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee’s wages accrued and unpaid at the time of discharge are due and payable immediately.

33. Furthermore, pursuant to California Labor Code § 202, DEFENDANT is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

34. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

35. During the CLASS PERIOD, DEFENDANT has willfully failed to pay accrued wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with California Labor Code §§ 201 and 202.

36. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

37. As a proximate result of DEFENDANT’s unlawful actions and omissions, PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts, plus interest thereon, and attorneys’ fees and costs, pursuant

1 to California Labor Code §§ 1194 and 2699.

2 **SIXTH CAUSE OF ACTION**

3 **Failure to Timely Pay All Wages Earned**

4 **[Cal. Labor Code § 204]**

5 **(Against DEFENDANT)**

6 38. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
7 allegations in the preceding paragraphs.

8 39. Pursuant to California Labor Code § 204, DEFENDANT is required to pay
9 employees at least twice a month for all wages earned during the preceding pay period.
10 California Labor Code § 204 mandates that labor performed between the 1st and 15th days,
11 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
12 during which the labor was performed, and labor performed between the 16th and the last day,
13 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
14 month.

15 40. Furthermore, pursuant to California Labor Code § 204, if DEFENDANT utilizes
16 an alternate payday schedule, DEFENDANT is required to pay wages within seven calendar days
17 of the end of the payroll period in which the wages were earned.

18 41. During the CLASS PERIOD, DEFENDANT has willfully failed to timely pay
19 accrued wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance
20 with California Labor Code § 204.

21 42. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available
22 statutory penalties, together with interest thereon, as well as other available remedies.

23 43. As a proximate result of DEFENDANT’s unlawful actions and omissions,
24 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount
25 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are
26 entitled to recovery of such amounts, plus interest thereon, and attorneys’ fees and costs, pursuant
27 to California Labor Code §§ 1194 and 2699.

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SEVENTH CAUSE OF ACTION

Failure to Maintain Required Records

[Cal. Labor Code §§ 226; IWC Wage Order No. 1-2001, § 7]

(Against DEFENDANT)

44. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

45. During the CLASS PERIOD, as part of DEFENDANT’s illegal payroll policies and practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due, DEFENDANT knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 1-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

46. As a proximate result of DEFENDANT’s unlawful actions and omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys’ fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

EIGHTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements

[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 1-2001, § 7]

(Against DEFENDANT)

47. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

48. During the CLASS PERIOD, DEFENDANT routinely failed to provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in

1 writing showing each employee’s gross wages earned, total hours worked, all deductions made,
2 net wages earned, the name and address of the legal entity or entities employing PLAINTIFF and
3 CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the
4 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
5 § 226 and IWC Wage Order No. 1-2001, § 7.

6 49. During the CLASS PERIOD, DEFENDANT knowingly and intentionally failed to
7 provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage
8 statements in accordance with California Labor Code § 226(a).

9 50. As a proximate result of DEFENDANT’s unlawful actions and omissions,
10 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
11 trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and
12 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to
13 civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of
14 costs, expenses, and reasonable attorneys’ fees, including but not limited to those provided in
15 California Labor Code § 226(e), as well as other available remedies.

16 **NINTH CAUSE OF ACTION**

17 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of**
18 **Duties**

19 **[Cal. Labor Code § 2802]**

20 **(Against DEFENDANT)**

21 51. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
22 allegations in the preceding paragraphs.

23 52. California Labor Code § 2802(a) requires an employer to indemnify an employee
24 for all necessary expenditures or losses incurred by the employee in direct consequence of the
25 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

26 53. During the CLASS PERIOD, DEFENDANT knowingly and willfully failed to
27 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred
28 in direct consequence of the discharge of their duties while working under the direction of

1 DEFENDANT, including but not limited to expenses for uniforms, cell phone usage, and other
2 employment-related expenses, in violation of California Labor Code § 2802.

3 54. As a proximate result of DEFENDANT’s unlawful actions and omissions,
4 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
5 trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to
6 California Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are
7 entitled to all available statutory penalties and an award of costs, expenses, and reasonable
8 attorneys’ fees, including those provided in California Labor Code § 2802(c), as well as other
9 available remedies.

10 **TENTH CAUSE OF ACTION**

11 **Unfair and Unlawful Business Practices**

12 **[Cal. Bus. & Prof. Code §§ 17200 et. seq.]**

13 **(Against DEFENDANT)**

14 55. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
15 allegations in the preceding paragraphs.

16 56. Each and every one of DEFENDANT’s acts and omissions in violation of the
17 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but
18 not limited to DEFENDANT’s failure and refusal to provide required meal periods,
19 DEFENDANT’s failure and refusal to provide required rest periods, DEFENDANT’s failure and
20 refusal to pay overtime compensation, DEFENDANT’s failure and refusal to pay minimum
21 wages, DEFENDANT’s failure and refusal to timely pay all wages due, DEFENDANT’s failure
22 and refusal to pay all wages due to discharged or quitting employees, DEFENDANT’s failure and
23 refusal to furnish accurate itemized wage statements; DEFENDANT’s failure and refusal to
24 maintain required records, DEFENDANT’s failure and refusal to indemnify PLAINTIFF and
25 CLASS MEMBERS for necessary expenditures and/or losses incurring in discharging their
26 duties, constitutes an unfair and unlawful business practice under California Business and
27 Professions Code § 17200 et seq.

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1 57. DEFENDANT’s violations of California wage and hour laws constitute a business
2 practice because DEFENDANT’s aforementioned acts and omissions were done repeatedly over
3 a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and
4 CLASS MEMBERS.

5 58. DEFENDANT has avoided payment of wages, overtime wages, meal periods, rest
6 periods, and other benefits as required by the California Labor Code, the California Code of
7 Regulations, and the applicable IWC Wage Order. Further, DEFENDANT has failed to record,
8 report, and pay the correct sums of assessment to the state authorities under the California Labor
9 Code and other applicable regulations.

10 59. As a result of DEFENDANT’s unfair and unlawful business practices,
11 DEFENDANT has reaped unfair and illegal profits during the CLASS PERIOD at the expense of
12 PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANT should be made to
13 disgorge its ill-gotten gains and to restore them to PLAINTIFF and CLASS MEMBERS.

14 60. DEFENDANT’s unfair and unlawful business practices entitle PLAINTIFF and
15 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not
16 limited to orders that DEFENDANT accounts for, disgorge, and restore to PLAINTIFF and
17 CLASS MEMBERS the wages and other compensation unlawfully withheld from them.
18 PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged
19 from DEFENDANT in an amount according to proof at the time of trial, but in excess of the
20 jurisdiction of this Court.

21 **ELEVENTH CAUSE OF ACTION**

22 **Representative Action for Civil Penalties**

23 **[Cal. Labor Code §§ 2698–2699.5]**

24 **(Against DEFENDANT)**

25 62. PLAINTIFF incorporates herein by specific reference as though fully set forth, the
26 allegations in the preceding paragraphs, with exception of the allegations in paragraph 12 and the
27 subparagraphs thereto.

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1 63. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor
2 Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other
3 current and former employees of DEFENDANT pursuant to the procedures specified in
4 California Labor Code § 2699.3, because PLAINTIFF and CLASS MEMBERS were employed
5 by DEFENDANT and the alleged violations of the California Labor Code were committed
6 against PLAINTIFF and CLASS MEMBERS.

7 64. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
8 Labor Code §§ 2698–2699.5, PLAINTIFF and CLASS MEMBERS seeks to recover civil
9 penalties, including but not limited to penalties under California Labor Code §§ 2699, 210,
10 226.3, 558, 1174.5, 1197.1, and IWC Wage Order No. 1-2001, § 20, from DEFENDANT in a
11 representative action for the violations set forth above, including but not limited to violations of
12 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and
13 2802. PLAINTIFF and CLASS MEMBERS are also entitled to an award of reasonable attorneys’
14 fees and costs pursuant to California Labor Code § 2699(g)(1).

15 65. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice by
16 certified mail to the California Labor and Workforce Development Agency (“LWDA”) and
17 DEFENDANT of the specific provisions of the California Labor Code and IWC Wage Orders
18 alleged to have been violated, including the facts and theories to support the alleged violations.
19 Within sixty-five (65) calendar days of the postmark date of PLAINTIFF’s notice letter, the
20 LWDA did not provide notice to PLAINTIFF that it intends to investigate the alleged violations.

21 66. Therefore, PLAINTIFF has complied with all of the requirements set forth in
22 California Labor Code § 2699.3 to commence a representative action under PAGA.

23 **COLLECTIVE ACTION**

24 **TWELFTH CAUSE OF ACTION**

25 **Failure to Pay All Wages and Overtime Compensation in Violation of the Fair Labor**

26 **Standards Act**

27 **[29 U.S.C. § 201 et seq.]**

28 **(Against DEFENDANT)**

1 67. PLAINTIFF incorporate herein by specific reference as though fully set forth the
2 allegations in all preceding paragraphs, with exception of the allegations in paragraph 12 and the
3 subparagraphs thereto.

4 68. The FLSA, 29 U.S.C. § 201 *et seq.*, provides that an employee must be
5 compensated for all hours worked, including all straight time compensation and overtime
6 compensation.

7 69. The FLSA further provides that employees shall not be employed more than forty
8 (40) hours in any workweek, unless they receive additional compensation beyond their regular
9 wages in amounts specified by law.

10 70. The FLSA requires, among other things, that employers whose employees are
11 engaged in interstate commerce, engaged in the production of goods for commerce, or employed
12 in an enterprise engaged in commerce or in the production of goods for commerce must pay
13 employees the minimum wage for all time worked and overtime pay at their regular rate of pay.
14 29 U.S.C. §§ 206(a)(1) and 207(a)(1). DEFENDANT is subject to the requirements of the FLSA
15 because they are an enterprise engaged in interstate commerce and their employees are engaged
16 in commerce.

17 71. PLAINTIFF and all similarly situated employees (the “COLLECTIVE CLASS”)
18 are victims of a uniform and company-wide compensation policy which, in violation of the
19 FLSA, has been applied to all non-exempt employees who worked for DEFENDANT in the State
20 of California.

21 72. DEFENDANT has a uniform policy and practice of failing to pay PLAINTIFF and
22 the COLLECTIVE CLASS wages and overtime compensation for all hours worked; requiring,
23 permitting, or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,
24 permitting, or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest
25 periods; illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS
26 worked; failing to properly maintain PLAINTIFF’s and CLASS MEMBERS’ records; and failing
27 to provide accurate itemized wage statements to PLAINTIFF and CLASS MEMBERS for each
28 pay period.

1 73. DEFENDANT has a class-wide policy and practice of failing to pay PLAINTIFF
2 and CLASS MEMBERS overtime wages at their regular rate of pay. DEFENDANT’s method of
3 calculating the regular rate of pay for overtime purposes is unlawful under California and federal
4 law.

5 74. DEFENDANT has a uniform policy and practice of not paying PLAINTIFF and
6 the COLLECTIVE CLASS for all hours worked, including straight time and overtime
7 compensation, and requiring employees to work passed their scheduled shift without
8 compensation.

9 75. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful
10 violations of the FLSA. DEFENDANT’s unlawful conduct, as described herein, has been willful
11 and intentional. DEFENDANT was aware or should have been aware that its practices were
12 unlawful.

13 76. DEFENDANT has acted neither in good faith nor with reasonable grounds to
14 believe that its actions and omissions were not a violation of the FLSA, and as a result thereof,
15 PLAINTIFFS and the COLLECTIVE CLASS are entitled to recover an award of liquidated
16 damages in an amount equal to the amount of unpaid wages and overtime pay, and/or
17 prejudgment interest at the applicable rate. 29 U.S.C. §216(b).

18 77. By virtue of DEFENDANT’s unlawful failure to pay PLAINTIFF and members of
19 the COLLECTIVE CLASS for all hours worked, including overtime, PLAINTIFF and the
20 COLLECTIVE CLASS have suffered, and will continue to suffer, damages in amounts which are
21 presently unknown to PLAINTIFF and members of the COLLECTIVE CLASS, but which will
22 be ascertained according to proof at trial. Accordingly, DEFENDANT is liable for unpaid wages,
23 together with an amount equal as liquidated damages, attorney’s fees and costs of this action.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons similarly
26 situated, respectfully prays for relief against DEFENDANT and DOES 1 through 50, inclusive,
27 and each of them, as follows:

- 28 1. For compensatory damages in an amount to be ascertained at trial;

1 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well
2 as disgorged profits from DEFENDANT’s unfair and unlawful business practices;

3 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
4 and IWC Wage Order No. 1-2001;

5 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

6 5. For preliminary and permanent injunctive relief enjoining DEFENDANT from
7 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
8 from engaging in the unlawful business practices complained of herein;

9 6. For waiting time penalties pursuant to California Labor Code § 203;

10 7. For statutory and civil penalties according to proof, including but not limited to all
11 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;

12 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
13 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
14 provision providing for pre-judgment interest;

15 9. For reasonable attorneys’ fees and costs pursuant to California Labor Code
16 §§ 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions
17 providing for attorneys’ fees and costs;

18 10. For declaratory relief;

19 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
20 Seventh, Eighth, Ninth, and Tenth Causes of Action as a class action;

21 12. For an order certifying that the collective action pursuant to the FLSA and prompt
22 issuance of notice pursuant to 29 U.S.C. § 216(b);

23 13. For an order appointing PLAINTIFF as class representative, and PLAINTIFF’s
24 counsel as class counsel; and

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14. For such further relief that the Court may deem just and proper.

DATED: June __, 2019

Respectfully submitted,

MATERN LAW GROUP, PC

By: _____

Matthew J. Matern
Tagore Subramaniam
Daniel J. Bass
Attorneys for Plaintiff EVERETT KING

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: June __, 2019

Respectfully submitted,

MATERN LAW GROUP, PC

By: _____

Matthew J. Matern
Tagore Subramaniam
Daniel J. Bass
Attorneys for Plaintiff EVERETT KING